ment; it ought not to be, because the more you charge for the stumpage, the greater you make the price of the timber itself to the ultimate consumer. There should be, however, some charge to cover the expense of administration, and of the charge that is made, the bulk of it should be turned over to the States in which the timber exists to supply the place of the taxes which would be imposed upon the land if it were in private ownership.

So also with reference to oil and coal, we should either classify these lands and then reserve them, permit their development under liberal laws providing for a royalty system, or else we should provide for the entry of the entire surface for agricultural or grazing purposes, reserving to the Government any future discoveries of coal or oil or phosphate. The latter is what the Government of Canada has done under the inspiration of this conservation movement; and yet some of our western friends say, "Oh, no; when you grant a homestead you must grant title from the heavens above to the center of the earth below," losing sight of the fact that whilst they insist we are driving the settlers to Canada, those settlers are there gladly accepting homesteads that give title neither to the roof of heaven nor to the depths below, but which give title only to the surface for agriculture, the mineral, the timber, and the water power locations being reserved.

Then there is another element, that of water power. We all know that hydroelectric power is entering more into the daily life of our people than any other element; we know the tendency toward its monopolistic control; we know that a great movement is now projected which will involve the utilization of our rivers for every purpose, including tributaries and source streams, and that this comprehensive plan involves not only the improvement of rivers for navigation, but for every useful purpose under a system of cooperation between the Nation and the States, under which each of them will do its work and pay its proportion of the cost that belongs to its jurisdiction.

Now, what is suggested under this conservation movement? Simply that the water-power sites should not go with the grant; that, whilst a man may make an agricultural entry which covers a power site, yet the title to that power site, if it is hereafter developed to be useful as such, shall not pass. The law can be shaped in such a way as to give the owner of that property, the entryman, proper compensation for his improvements. It is not the purpose of the conservation movement to wrong any man, to wrong the entryman who has made an agricultural entry upon a water-power site, but simply to prevent him from holding up the country, holding up the community, and wronging the people at large.

I do not pretend to say what law should be passed upon these questions. Time does not permit; but it seems to me that the rational way to proceed is for the Members from the West to confer together, appoint a committee, adjust this question, and present it to Congress for its approval. I assume that the Members from the West are not opposed to a wise conservation policy; that if they do object to a reservation to the Nation, they will not object to a reservation to their respective States; and, if it is necessary, we can so shape these laws as to make the reservation of the water power, the coal, and the oil run to the States in which these natural resources are located, instead of to the Nation. I assume that any rational conservationist in the country will be satisfied if such natural resources are reserved to the public rather than granted to monopolistic corporations.

The Senator from Idaho [Mr. BORAH] has referred to the fact that the homestead bill is in conference. It is in conference under an understanding in the House of Representatives when it went to conference that the question of the reservation of minerals, water power, and timber should be considered. We have been considering them, and as they involve almost the entire conservation question necessarily a good deal of time has been taken up.

I will say for the Secretary of the Interior that, whilst he is not as familiar, perhaps, with the West as are many of us, I am convinced that his desire is the real advancement and development of the West. He is desirous of doing away with the army of special agents who are now called upon under existing law to classify the public lands, to determine what is coal, what is water power, and what is oil land, a process that will necessarily take a great deal of time and that involves vexation to the settler. He would like to save vexation upon this subject by adopting the Canadian law, which is held up to our approval here, and he says that if that is adopted and grants of homesteads are made simply to the surface, reserving the mineral below and the timber and the water power, as the Canadian law does, then settlement upon the land will be comparatively easy, the army of special agents will be dismissed, and settlement can go on with the absolute assurance that the future discovery of water-power sites or coal or oil will be in the interest of all the people, rather than in favor of special interests.

I hope that we shall come to some conclusion within a short time, but we shall come to no satisfactory conclusion until the men of the West meet together, as they did upon the irrigation question, and present a solution of this entire subject.

Mr. BURNHAM. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 35 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, May 15, 1912, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

TUESDAY, *May 14, 1912.*

The House met at 11 o'clock a. m.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Our Father in heaven cleanse us, we beseech Thee, from all unrighteousness, and fill our hearts with the Christ spirit, that we may think clearly, speak wisely, and act nobly in all the duties pertaining to the hour. For Thine is the kingdom and the power and the glory forever. Amen.

The Journal of the proceedings of yesterday was read and approved.

APPEAL FROM DEPARTMENT REGULATIONS OF PUBLIC DOMAIN.

Mr. RAKER. Mr. Speaker, I ask unanimous consent to address the House for half a minute.

The SPEAKER. The gentleman from California asks unanimous consent to address the House for half a minute. Is there objection? [After a pause.] The Chair hears none.

Mr. RAKER. Mr. Speaker, I desire to insert in the RECORD a speech delivered before the public lands convention held at Denver Colo., September 28 to October 3, 1911, on the right of appeal to the courts from the decisions of the department in relation to the public domain, namely, "The demand for access to the courts upon all questions arising from department regulations pertaining to the public domain."

Mr. BARTLETT. Is it a speech by the gentleman himself?

Mr. RAKER. No.

Mr. BARTLETT. Whose speech is it?

Mr. RAKER. It is a speech delivered at Denver by Mr. Lane.

The SPEAKER. Of the Interstate Commerce Commission?

Mr. RAKER. No; Mr. E. A. Lane, of California.

Mr. BARTLETT. Mr. Speaker, I am not going to object, but I want to say that it occurs to me that printing speeches in the RECORD indiscriminately for distribution has been carried to an extreme degree. There has been considerable criticism of it in the public press, and I fear justly so. The printing of indiscriminate speeches of gentlemen much distinguished, and others not quite so distinguished, for the purpose of using the franking privilege to distribute the speeches is a practice not to be encouraged. I am not going to object to my friend's request this time, but I think that hereafter, unless it is a very important matter, and is a speech from some very prominent Member of either House, or some man who has occupied some distinguished position to whom attention has been attracted, that I shall object.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

The following is the speech referred to:

[Speech of Mr. E. A. Lane, of California, at the Public Lands Convention, at Denver, Colo., Sept. 28 to Oct. 3, 1911.]

THE DEMAND FOR ACCESS TO THE COURTS UPON ALL QUESTIONS ARISING FROM DEPARTMENT REGULATIONS PERTAINING TO THE PUBLIC DOMAIN.

"Mr. Chairman, delegates, ladies, and gentlemen: Elbert Hubbard, in speaking of the legal profession, has said that one-half of the lawyers are hanging onto the coat tails of the business community, while the other half are throwing banana peelings under the wheels of progress. Martin Luther, speaking on the same topic, said:

"Lawyers commonly dispute about words. They alter the facts and fall to go to the bottom of them that the truth may be discovered. They take the money of the poor and with their tongues thrash out both their pockets and their purses. They make poor Christians, and few of them shall be saved.

"According, therefore, to generally accepted authority, ancient as well as modern, this present subject of demand for access to the courts in public-land cases would be deemed of very little importance by the people at large or by this convention if it affected only the welfare of the lawyers. As a measure for the conservation of litigation, undoubtedly, it would not be popular. However, this subject is not one for the conservation of litigation. It is a subject which affects vitally the welfare of the homestead claimant, of the irrigator, of the miner and

prospector, of the right-of-way applicant, of the grazer, and of every settler on or near public lands or public reservations.

"In looking over the list of subjects to be discussed at this convention, it occurred to me immediately that this present subject of demand for access to the courts in public-land matters is one upon which all possible factions should be practically unanimous; there should be no conflict nor any division along the lines of so-called conservation or anticonservation. To open the courts of justice to individual suitors who consider themselves to be adversely affected or illegally damaged by some decision, or by the enforcement of some rule or regulation, in public-land cases can not in any respect be considered a step antagonistic to any governmental policy. It can no more be considered a step against the Forest Service, or against the policy of reserving or leasing mineral lands and water-power sites, than could the allowance of access to the courts in customs cases be considered as a step in favor of free trade. Whatever Government policy may be adopted touching the public lands, surely all of us can agree upon the fundamental principle that that policy must be a legal one, in harmony with the Constitution and authorized by Congress. It is by this legal sanction that the protective tariff laws were established, and no one is in any way apprehensive that the Government's policy in that direction will be jeopardized or defeated because a means has been provided by which disputes in customs cases may be adjudicated.

"There may be some few individuals, of warped or distorted mentality or of disposition incompatible with free constitutional government, who have no confidence in human integrity, no faith in or respect for the courts, and no patience with any legal restraints or limitations which happen to run contrary to their own individual ideas of propriety or public policy. But such individuals are not conservatonists; they are anarchists. They are not accounted desirable citizens any more by the most enthusiastic believers in Government ownership and control than by the advocates of local State control over the public lands. It is not due to people of that peculiar stamp of immorality, but entirely owing to their successful submersion, that our form of government now exists and that courts of justice have been established. Certainly it is not to such individuals that any word here spoken is addressed. Courts of justice, and particularly the courts of our own country, have been found to be the most faithful friends and firmest protectors of individuals and their rights and privileges, but they have also with equal firmness protected and upheld regularity, stability, and efficiency in the lawful administration of government functions.

"I think that no one will deny that the present status of the law with reference to land claimants who seek access to the courts, or who are haled into court as defendants and opposed by Government officers, is indefensible. The doors of the courts, so far as concerns any practical means of access or measure of protection, are securely barred against public-land claimants. For the purpose of illustrating the illogical and unjustifiable extreme to which the rule has been extended, I wish to cite a case which came under my personal observation while I was district law officer of the Federal Forest Service at San Francisco. I desire first to state, however, that this case is not cited in criticism of the Forest Service. Under the law and the decisions of the courts, the Government officials had the defendant entirely under their personal power. By their personal clemency and leniency, but not by the law, he was protected.

"The case to which I refer was one of a suit by the Government against Mr. Harold T. Power, a resident of California, who is very well and favorably known; not a multimillionaire nor a timber baron. He had purchased in good faith from the Central Pacific Railroad Co. a quarter section—160 acres—of surveyed timberland. No patent to the land had been issued or even sought, because, under the terms of the railroad company's grant, Mr. Power's title to the land, even without patent, was absolute and complete, legally as well as equitably, provided only that the land was in fact nonmineral in character. In other words, the railroad company's legal title to all nonmineral land within its described area had become perfect and complete as a present grant from the Government immediately upon legal identification by survey, regardless of and independent of any action to be taken by the officials of the Land Department. This was conceded by the Government itself under the terms of the act of Congress. On the other hand, if the land was in fact mineral in character, it still belonged to the Government.

"The public-land surveyors in running the section and township lines had reported generally that this and other surrounding land was mineral, while a geologist of the Geological Survey, after a careful examination of the particular tract in question, had reported it nonmineral. The Government, however, filed suit against Mr. Power for some $2,000 for having cut timber on this land. In answer to the Government suit, he alleged that he had purchased the land, and offered to prove that the land was in fact nonmineral, and that therefore he had perfect title and was the legal owner of the timber. The court, however, sustained the Government's demurrer to Mr. Power's answer, and decided that, even though the land was in fact nonmineral, nevertheless the court could not allow the defendant to prove that fact. Mr. Power had been haled into court at the suit of the Government. His one possible defense lay in his proving that the land was nonmineral in character. With this proof he could legally establish his title; without it he must pay to the Government $2,000 for timber cut by him from his own land. Nevertheless, the court decided that it was powerless to afford him any relief. The court held that the Secretary of the interior, and the Secretary of the Interior alone, not the courts, possessed jurisdiction to hear and determine the evidence offered.

"This decision, unreasonable and unjust as it was, was strictly in accord with the law. It was so obvious, however, that the defendant was denied any opportunity for a fair hearing or for just relief that the officials of the Forest Service refused to proceed further with their prosecution. Nevertheless it was entirely possible under the law for them, simply because they were Government officials, to carry the case to judgment and to collect from Mr. Power $2,000, denying him meanwhile any opportunity of presenting before the court the very evidence necessary to his defense.

"The decision of the court in this Harold T. Power case was not only in accord with, but is also a very good illustration of, the present status of the law. And, strangely enough, this remarkable denial of access to the courts and of the protection of the courts to public-land claimants is not the result of any specific legislation. Congress has merely failed and neglected to legislate either one way or the other, and under this total lack of legislative direction the courts have, by their decisions, gradually reversed their former rules of practice. Formerly, under the decisions of the Supreme Court, the district court at San Francisco could not have denied to Mr. Power the opportunity which he asked to present evidence for the protection of his title against the suit of the Government officers. In two cases decided by the United States Supreme Court, one in 1870 and one in 1887, that court expressly held that the local courts should receive and consider and pass upon the evidence offered by public-land claimants in support of their title. By reason of the similarity, both in principles of law and in the nature of their facts, these two cases, although admitting of slight legal distinctions, are very closely analogous to the Harold T. Power case. In these two instances the grantee was a State instead of a railroad corporation, but, like the grant to the railroad corporation, the grant to the State took effect and vested legal title in the grantee in advance of and regardless of any official action by the Land Department.

"In the first of these two cases—the case of Railroad Co. *v.* Smith (76 U. S., 94)—the court said:

> "The right of the State did not depend upon his [the Secretary of the Interior] action, but on the act of Congress. * * * As that officer had no satisfactory evidence under his control * * * he must rely, as he did in many cases, on witnesses whose personal knowledge enabled them to report as to the character of the tracts claimed. * * * Why should not the same kind of testimony, subject to cross-examination, be competent when the issue is raised in a court of justice? * * * We are of opinion that the State court did not err in that [the admission of verbal testimony].

"This case, you will notice, not only held that the courts of justice had jurisdiction to receive and pass upon evidence, but gave cogent reasons upholding the propriety and duty of the courts in this regard.

"In the other case—Wright *v.* Roseberry (121 U. S., 488)—the Supreme Court said:

> "For the error in holding that the certificate of the commissioner was necessary to pass the title of the demanded premises to the State the case must go back for a new trial, when the parties will be at liberty to show whether or not the lands in controversy were in fact swamp and overflowed * * *. If they are proved to have been such * * * they were not afterwards subject to preemption by settlers.

"You will notice that in this last case, under the express direction of the United States Supreme Court, the parties were given liberty to introduce evidence in the lower court. The contrast between these two earlier cases and the recently decided Power case shows an obvious reversal of policy and of practice by the courts. This change, as above stated, has not been due to any action, but rather to inertia and inaction on the part of Congress.

"As showing, however, that such change adverse to public-land claimants has been definitely adopted by the United States Supreme Court, I wish to quote from the recent case of the

Riverside Oil Co. *v.* former Secretary of the Interior Hitchcock, reported in volume 190, United States Reports, page 316. The court said:

"* * * The head of an executive department * * * must exercise his judgment in expounding the laws and resolution of Congress under which he is from time to time required to act.

"* * * Whether he decided right or wrong is not the question. Having jurisdiction to decide at all, he had necessarily jurisdiction, and it was his duty to decide as he thought the law was, and the courts have no power whatever under those circumstances to review his determination by mandamus or injunction. * * * Nor does the fact that no writ of error will lie in such a case by which to review the judgment of the Secretary furnish any foundation for the claim that mandamus may therefore be awarded. The responsibility as well as the power rests with the Secretary, uncontrolled by the courts.

"It is interesting to note that at the date of this decision the statutory powers and duties of the Secretary of the Interior in public-land matters were identically the same as at the date of the decision in the case of Wright *v.* Roseberry, previously referred to, in which the Supreme Court expressly directed that evidence should be introduced before, and the facts there determined by, the trial court.

"Of course, these few cases here cited do not cover every detail nor every point of technical distinction that might be called to attention in a court of law. There are, however, a great number of cases which raise and dispose of almost every conceivable point that could be suggested in the interest of any public-land claimant, and the Supreme Court has resolved practically all of them in such a way as to bar the public-land claimant from access to courts. There are, it is true, three classes of exceptions to the rule, but these afford only limited and qualified relief. They are found, first, in mineral-land cases; second, where the claimant is defendant; and, third, where the land has been patented.

"First, under the mining laws, section 2326 of the United States Revised Statutes has for many years permitted free access to the courts in cases of private adverse claims. Disputes have been settled, the scope and effect of the mining laws determined, and private property rights adequately protected. Unfortunately there is no similar provision for agricultural claimants, or covering contests and adverse recommendations by Government officials against any character of claims.

"The second means of access to the courts referred to is by the claimant being haled into court at the suit of the Government. As seen in the Harold T. Power case (which was the first case I referred to), even then the claimant may be defenseless. In some few cases, involving rights of way and grazing regulations, the claimant has been brought into court upon the Government's suit for injunction. This remedy is not adequate, nor is it practicable except in comparatively rare instances.

"The third exception mentioned is in agricultural-land cases. A claimant who has been illegally deprived of his land by wrongful action of the land officers has the privilege of waiting until the land has been patented to some other person, and then file a suit in equity against that person to have him declared trustee of the land. There are many cases of this character in the books. A typical one is that of Ard *v.* Brandon, 156 U. S., 537, where the court said:

"He [the plaintiff in the suit] did all that was in his power in the first instance to secure the land as his homestead. That he failed was not his fault; it came through the wrongful action of one of the officers of the Government. * * * Here a rightful application was wrongfully rejected. * * *

"And again:

"Such wrongful rejection did not operate to deprive the defendant of his equitable rights. * * * If he does all that the statute prescribes as the condition of acquiring rights, the law protects him in those rights.

"The language in that case declaring the rule of adequate protection sounds reassuring. No suit in such cases can, however, be instituted until the Government has parted with its title. Ten, twenty, and thirty years ago it was the policy of the Land Department to patent the public lands as speedily as possible, and there were, practically speaking, no Government contests and no reserved or withdrawn areas. Even then this partial remedy was little better than a denial of justice, since a rightful claimant could be, and many times was, illegally deprived of the use and possession of his land, and forced to wait 5 or perhaps 10 years, until his adversary had secured Government patent, before he could even begin the necessarily expensive and cumbersome litigation. At the present time, moreover, the policy of the Government to make withdrawals and reservations has placed from one-fourth to three-fifths of the total area of many public-land States permanently, or for an indefinite period, beyond the possibility of being patented, and this remedy, unsatisfactory as it always was, is therefore now to that extent not available. In fact, this remedy is now generally recognized as of no practical value and is seldom invoked. It furthermore never did afford any relief, nor is there any other remedy available in cases where the claimant is directly opposed by the Government officers. As a matter of natural consequence, unavoidable under the present system, it may be added also that the greater number of instances of injustice and hardship of late years have occurred where claimants have been opposed by Government officials. It certainly can not fail to impress any impartial mind as being indeed most remarkable that in those particular cases where a claimant's asserted rights are considered by the executive department to be adverse to the interests of some one of its own projects or policies or bureaus, that in such cases, of all others, the claimant must be left entirely in the hands of that department, without the least possibility of any appeal or review elsewhere. Impartial judgment is humanly impossible where adversary and judge are one, no matter what may be the conscientious piety of that one.

"That the present system of absolute and uncontrolled executive power over public-land matters is indefensible in principle I think no one will deny. It is not necessary to cite Montesquieu's "Spirit of the Laws" or Alexander Hamilton's "Federalist Essays" or other authority; we all know that it is fundamentally un-American and contrary to every principle of our form of government to close the courts against relief or redress for violations of valuable legal rights. Two or three sentences may well be quoted, however, from the famous case of Marbury against Secretary of State James Madison, which was recently referred to by President Taft as one of the cornerstones of our Government. That case involved the violation of an individual citizen's property rights by the Secretary of a department. It is the oldest and strongest precedent in support of the protection of the individual against illegal executive action. The court said:

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of the Government is to afford that protection.

"It is emphatically the province and duty of the judicial department to say what the law is.

"It is a general and indisputable rule that where there is a legal right there is also a legal remedy by suit, or action at law, whenever that right is invaded.

"The principle, there so forcibly announced, of assurance to individual citizens of the willing protection of the courts should effectively operate in public-land cases above all others. It has always seemed to me that, of all citizens in civil life who are entitled to the full benefit of every safeguard and protection the law can offer, the one first in order should be the public-land claimant in his assertion of claim to the meager property rights he may obtain. He may in some instances have prospered and spread himself as did the wicked man referred to in the Psalms; but, as a rule, his has been and to-day is a hard lot, with struggle and hardship and with very little reward except the satisfaction of having sown where others shall reap. The pioneer in the larger business enterprises upon the public lands does not stand under the same halo of peculiar sympathetic personal interest as does the individual settler, but at the same time his enterprise and courage and initiative are far above the ordinary in public value. Certainly he does not merit any denial of common justice or to have closed against him the legal protection commonly accorded to the pawnbroker and the loan shark.

"No impelling cause or sound reason ever has been given for the present denial of judicial relief. The only justification ever suggested by the courts for closing their doors to the public-land claimant is that the land department has been constituted a special tribunal with judicial functions for his protection. That does not seem to justify the present complete denial of the courts to land claimants, because, as we have already seen, that department was not considered to be so sacredly judicial in 1887, when the case of Wright *v.* Roseberry was decided. The courts afforded at least a more liberal measure of relief at that time, and no legislation has been enacted since then requiring any change in the practice of the courts.

"Furthermore, there exists now much keener necessity for liberal access to the courts in land cases than ever before. In former years the Land Department maintained a far more judicial attitude than it does at the present time. Peculiarly enough, during the very period while the doors of the courts have been closing tighter and tighter against land claimants, influences have been at work causing the Land Department to become less and less judicial and more and more distinctly executive in its attitude and administration. As previously mentioned, we know that in former decades the controlling policy of the Land Department was to patent the public lands as rapidly as possible. There were few contests instituted by the

Government officers and practically no reserved or withdrawn areas. At that time the chief function of the officers of the department was to sit in judgment upon conflicting private claims concerning which they had cause to feel only the desire and promptings of an impartial and wholly dispassionate judge. The sense of purely judicial obligation and duty was, naturally enough, developed and fostered among them by the fact that these classes of cases predominated in their work, and the prevailing attitude of the department was therefore conscientiously judicial. To this situation it was due no doubt, in a large degree, that even in those cases where there was no private contest and the issues involved were solely between the Government and the private applicant, the officials at that time were, as a general rule, more keenly sensitive to the binding obligation resting upon the judge to determine impartially whether the applicant had or had not complied with the law and become entitled legally to the property or legal rights applied for. There was not then, as, unfortunately, there is at the present time, a general disposition among the departmental subordinates to adopt the now current sophistry which argues that the department, if in its own opinion the public good will be subserved thereby, may reject private claims, even though the applicant has admittedly done 'all that the statute prescribes as the condition for acquiring' the rights sought. In former years general recognition and respect was willingly accorded to the language which the Supreme Court used in the case of Frisbie *v.* Whitney (76 U. S., 668) that the land officers have no legal authority to refuse 'rights, however inchoate, which are protected by laws still in existence,' and to the declaration of the Supreme Court in the case of Cornelius *v.* Kessel (128 U. S., 456), which says, concerning the Land Department, that its—

"power of supervision and correction is not an unlimited or an arbitrary power. It can be exerted only when the entry was made upon false testimony or without authority of law. It can not be exercised so as to deprive a person of land lawfully entered.

"In considering the greater need of access to the courts now than in former years it should also be remembered that the forest reservations now cover nearly 200,000,000 acres and that within this tremendous domain are property rights and private claims equal in number and in importance to the total private property in some of the States. The Forest Service has practically no established system of notice or for giving opportunity for hearings and maintains no regularity or judicial character to its proceedings in adjudicating private rights. In most instances it acts ex parte upon reports and information kept strictly confidential in its own files. It is at the present time administering a large number of important land laws and an accumulated mass of departmental regulations under which private rights and property claims are determined (you can not say adjudicated) in the cheerful and summary and unceremonious manner of a black negro mammy spanking her many pickaninnies on a busy wash day. I say that not because I am hostile to the Forest Service, for I am not; but it is true. And it is unfortunate also for the Forest Service itself that it is true. This is a serious matter. And we must bear in mind that this bureau now acts within its own sphere with the same power of final and uncontrolled adjudication of private rights *as does the* Land Department.

"Another circumstance increasing the present need for access to the courts is the fact that the number of statutes and departmental regulations thereunder has increased. The executive officials are now confronted by a bewildering legal tangle of laws and regulations, many of them inconsistent with each other and some of them inconsistent in their own terms. Other statutes are fragmentary or antiquated. The situation is a difficult and embarrassing one even for administration. For judicial interpretation and construction we should certainly have access to a court or courts of recognized standing.

"It might be well to consider a very few of the circumstances attending the administration of the executive departments, from whose decisions the public-land claimant now has no appeal or possibility of relief. I think that no thoughtful student of the principles and historical development of our institutions will deny that the distinctive characteristic of executive bureaus and departments should properly be vigorous activity along the lines of their own selected or adopted policies. These policies will change from time to time with changing administrations and political variations. Even under the most complete system of civil service the changing of Secretaries and of policies will bring about all-pervading changes in attitude throughout the department. Civil service may limit the freedom of but it can by no means prevent the exercise of influence by the Secretary over his subordinates. Even though he encourages personal independence, the Secretary's influence is and always will be controlling.

"The Secretary and those in authority under him always have free power of promotion and demotion, and of transfer from certain positions to other positions, and of change from certain duties to others more or less advantageous; and the subordinates are always keenly conscious of the possibility that it may be advantageous to act in harmony with the Secretary's policy. This instability and change of policy and attitude, this trimming of sails to suit varying currents renders absolutely impossible the establishment and firm maintenance of a definite and consistent system of public-land law. In fact, the very thought of purpose or of administrative policy, or the thought of political effect—all of these ideas which are inherent in the executive departments—are in their very nature incompatible with any proper conception of a judicial tribunal. It is little less than criminal to leave the public-land claimant, without any hope of relief or possibility of redress, at the mercy of such a system. It is a political crime against the public-land States of the West that the property titles and legal claims, upon the security of which must depend largely the enterprise and business development of the western country, must remain subject to the judication and to the sole protection of a tribunal of this nature.

"Limited time makes it impracticable to discuss in detail, or even to cite, specific instances of hardship and injustice under the present system of exclusive departmental control. It is interesting to investigate the many suits which were brought by defeated claimants to recover land after the issuance of patent in former years when conditions were different and that remedy offered some measure of relief. A study of those cases will furnish ample evidence that the executive officers of the Land Department even in former years frequently denied individual property rights in clear violation of the law and under circumstances of great injustice. On account of the inadequacy of that remedy, as previously explained, it must be remembered also that the number of suits actually brought represents but a small proportion of the cases in which injustice was suffered even then. And no one familiar with the actual conditions of affairs in public-land administration, with the present confusing and inadequate public-land laws and with the irresistibly biasing and warping effect of recent political agitation in public-land matters, will contend that the denials of legal rights and of privileges lawfully claimed under the public-land laws are now fewer in number than they were in former years.

"I wish to give a brief quotation indicating the hardships actually attending the present administration of the public-land laws, and indicating not only the hardships to individuals, but the injustice to investors, and also the unfortunate uncertainty of, and insecurity in the protection of, legal rights, which is now seriously retarding legitimate commercial development in the public-land States. This quotation will be from a speech by Hon. JOHN E. RAKER, of California, reported in the CONGRESSIONAL RECORD of July 5 of this year. Judge RAKER has for years been a very prominent and successful lawyer. Before his election to Congress he was judge of one of the superior courts of the State. He is thoroughly conversant with public-land conditions and practice. His congressional district includes Government lands of large area, both within and outside of forest reservations. He is recognized as an authority upon questions of public-land law. Judge RAKER's language is of all the more interest and value because he is an accepted and thoroughly orthodox conservationist, and one of the stanchest supporters of the Federal Forest Service. His speech on July 5 was directed in favor of his own resolution calling for a thorough investigation by Congress of actual public-land conditions in the West. I shall give four excerpts from his speech:

"A great number of complaints have been coming from the citizens of all the public-land States, protesting against alleged hardship, injustice, and inequality in the operation of the public-land laws. The complaints received have not been restricted to any one class. They have come from homestead and desert-land claimants, from prospectors and the locators of mining claims, from municipalities and companies supplying power and water to municipalities, from irrigators and from irrigation companies, from operators of mines, mills, and reduction works, and from those living east as well as west who have invested in mining, irrigation, and water-power development. * * *

"Congress some six years ago enacted a statute apparently granting rights of way for reservoirs, ditches, pipe lines, tunnels, and canals for municipal, mining, milling, and ore-reduction purposes. Now complaints, serious complaints, are heard that this statute has been so stripped and whittled away by construction and application that its beneficial objects and purposes are utterly defeated. * * *

"Business investment and enterprise are discouraged and seriously retarded by the maze of doubt and uncertainty surrounding this whole general subject of rights of way across the public lands, and by the constant menace and threat of litigation if any move is made. Complaint is made repeatedly also that there is a tendency on the part of some Government agents and officers to penalize and to question the motives and integrity of those who wish to take such questions into the courts for adjudication. This is a very serious complaint and should be sifted to the bottom, especially in view of the circumstances in which honest men must find themselves in considering the legal phases of the situation. The scope and effect of many of the statutes when consid-

ered singly, and the effect of some of the later ones upon those passed previously, remain unadjudicated. Not only the scope and effect of these laws in a general sense, but even the significance of many of their most important words and phrases, remain undetermined. They refer in terms to railroads, reservoirs, canals, ditches, pipe lines, flumes, dams, highways, trails, tramways, and transmission and telegraph lines, and yet the purport and logical effect of a recent ruling by the standing master in chancery of the United States Circuit Court at San Francisco would seem to be that rights of way across the public lands of the West can no longer be secured even by irrigation companies or for transcontinental railroads. * * *

"There are many complaints lodged also by miners, homesteaders, and desert-land claimants to the effect that the practice and decisions have tended of late years to handicap needlessly and unnecessarily to annoy and harass those who have faithfully and honestly complied with the public-land laws.

"It is not, however, a fault chargeable to the departmental or bureaucratic officials that such constant complaint is everywhere made against their rulings and decisions. The fault is not with them, but with the present system. The Executive can not properly be expected to be judicial or impartial in its attitude. It is the active agent of the Government. It of right ought to be definite and vigorous, not judicial or deliberative. It is the constitutional duty of Congress promptly to enact new laws to correct any undesirable policy legally adopted by the Executive, while the duty of restraining illegal executive tendencies lies with the judiciary. This duty will be performed naturally, and in the usual and regular manner, by opening the courts to complaints of injustice and injury. The courts by declaring the true meaning, scope, and effect of the laws will uphold and support the Executive in all proper interpretation and application of the statutes.

"I understand—in fact, I think I may safely say that I am sure—that it is the personal desire of the Secretary of the Interior and of the Forester to have cleared away by definite judicial determination the many points of doubtful or disputed legality which now exist concerning the subjects under their administration. They desire to know by determinative judicial authority what they can and should do and what things can not and ought not to be done. Free access to the courts will bring authoritative determinations of private rights, will relieve the executive departments from the burden of much bitter criticism, and will bring justification and support to the lawful execution of whatever public-land policy is adopted.

"President Taft has recognized both the right and the need of access to the courts in this class of cases. On June 21 of last year he sent to Congress a special message urging early consideration of the subject. He said:

"There are, perhaps, no questions in which the public has more acute interest than those relating to the disposition of the public domain. I am just in receipt from the Secretary of the Interior of a recommendation that in disposition of important legal questions which he is called upon to decide relating to the public lands, an appeal be authorized from his decision to the Court of Appeals for the District of Columbia.

"I fully indorse the views of the Secretary in this particular, which are set forth in his letter, transmitted herewith, and urge upon the Congress an early consideration of the subject.

"Whether the particular method suggested by the President, that of appeal to the Court of Appeals for the District of Columbia, is the most desirable method to adopt, or whether some other means of access to the courts should be provided, should be carefully considered and freely discussed. The chief object of the President's message, however—that of securing legislation expressly granting the right of access to the courts—should receive our hearty approval and the active support of all."

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed bill of the following title, in which the concurrence of the House of Representatives was requested:

S. 6585. An act increasing the appropriation for the extension, alteration, and improvement of the public building in the city of Concord, N. H.

SENATE BILL REFERRED.

Under clause 2, Rule XXIV, Senate bill of the following title was taken from the Speaker's table and referred to its appropriate committee, as indicated below:

S. 6585. An act increasing the appropriation for the extension, alteration, and improvement of the public building in the city of Concord, N. H.; to the Committee on Public Buildings and Grounds.

ENROLLED BILL AND JOINT RESOLUTION SIGNED.

Mr. CRAVENS, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bill and joint resolution of the following titles, when the Speaker signed the same:

H. R. 19238. An act to amend section 90 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, and for other purposes; and

H. J. Res. 39. House joint resolution proposing an amendment to the Constitution, providing that Senators shall be elected by the people of the several States.

REGULATION OF INJUNCTIONS.

Mr. HENRY of Texas. Mr. Speaker, is House resolution 520, which was under consideration last evening at adjournment, now before the House?

The SPEAKER. It is.

Mr. MANN. Mr. Speaker, I make the point of order that the resolution reported by the gentleman from Texas is not a privileged resolution, that it is not in order, and that the Committee on Rules had no jurisdiction to report the resolution.

The SPEAKER. Upon what does the gentleman base his point of order?

Mr. MANN. The rule provides that—

At the expiration of such time the previous question shall be ordered on the bill and said substitute to final passage, and the House shall immediately proceed to vote on the bill and substitute without any intervening motion.

Mr. Speaker, it became the practice in the Congresses prior to the Sixty-first Congress to adopt resolutions of this kind reported from the Committee on Rules. For instance, on November 16, 1903, the gentleman from Pennsylvania [Mr. DALZELL] reported a resolution for the consideration of the Cuban reciprocity bill, which concluded in this language:

And whenever general debate is closed the committee shall rise and report the bill to the House, and immediately the House shall vote, without debate or intervening motion, on the engrossment and third reading and on the passage of the bill.

The question was raised at that time whether that shut out any intervening motion, and it was so ruled, although an appeal was taken and the appeal was overruled. Subsequently various other resolutions were asked from the Committee on Rules, which eliminated even the right of appeal.

Following that course, many Members of the House have come to believe that the right to offer a motion to recommit, which originally was designed to permit the gentleman in charge of the bill to move to recommit for the purpose of correcting an error in the bill—that the right to offer a motion to recommit had become a right of the minority, and there was incorporated in the rules of the Sixty-first Congress, and it is in the rules of this Congress, this provision, on page 359 of the Manual, referring to the Committee on Rules:

The Committee on Rules shall not report any rule or order which shall provide that business under paragraph 7, Rule XXIV, shall be set aside by a vote of less than two-thirds of the Members present; nor shall it report any rule or order which shall operate to prevent a motion to recommit being made, as provided in paragraph 4 of Rule XVI.

Now, this rule endeavors to cut out the motion to recommit, because it expressly provides that the House shall immediately proceed to vote on the bill and substitute without any intervening motion; while the rule provides that the Committee on Rules is not authorized to report any rule which shall operate to prevent a motion to recommit being made.

It is true that the motion to recommit is not of as great value to the minority as it was supposed to be before the ruling of the Chair the other day, but the right to offer the motion to recommit is preserved by the rules, and preserved in such a manner that the Committee on Rules can not report a rule which shuts it out. Doubtless they could report a rule which would amend the rule providing for a motion to recommit, or the Committee on Rules could report a rule eliminating the rule to recommit, but they can not report a rule which violates the rule providing for the motion to recommit.

The SPEAKER. The Chair would like to ask the gentleman from Illinois a question. Suppose this rule was adopted and there was a controversy as to whether anybody had the right to make a motion to recommit, is the gentleman from Illinois clear that this rule undertakes to cut out the motion to recommit?

Mr. MANN. I am clear that under the precedents it does. It says that it does, and under the precedents it does.

The SPEAKER. The Chair will hear the gentleman from Texas.

Mr. HENRY of Texas. Mr. Speaker, the question of the Chair to the gentleman from Illinois is pertinent, and I was about to address myself to that point. There was no intention on the part of the committee to prevent the motion to recommit, and I apprehend that there will be no objection made to a motion of that kind on this side of the House.

But let me suggest several thoughts. It is true the House amended the rules of the House to read that the Committee on Rules shall not report any rule or order which shall operate

to prevent a motion to recommit being made as provided in paragraph 4 of Rule XVI.

Paragraph 4 of Rule XVI reads:

After the previous question shall have been ordered on the passage of a bill or joint resolution, one motion to recommit shall be in order, and the Speaker shall give preference in recognition to such Member who is opposed to the bill or joint resolution.

Mr. Speaker, while it is true the Committee on Rules has been forbidden to report a rule that would deny a motion to recommit, yet if the Committee on Rules should report such a rule, and this House by a majority vote should adopt it, that would preclude the right to make such motion.

Why, Mr. Speaker, only the other day the Committee on Rules reported a rule in regard to an appropriation bill, the legislative, executive, and judicial, to supersede temporarily the entire rules of this House by a special rule in order to make certain things which were in that appropriation bill not subject to a point of order.

The SPEAKER. The Chair would like to call the attention of the gentleman to the last proposition in this subdivision—

Nor shall it—

That is the Committee on Rules—

report any rule or order which shall operate to prevent a motion to recommit being made as provided in paragraph 4 of Rule XVI.

What does that mean?

Mr. HENRY of Texas. That means that the Committee on Rules shall not report it, but even conceding that they have reported rules which exclude that right, the Committee on Rules has a right to report it to the House, and if the House adopts it such action would abrogate that part of the rule, because it temporarily sets aside the rules of the House.

Mr. NORRIS. Will the gentleman permit a question?

Mr. HENRY of Texas. In a moment. The House by a majority vote can adopt any special rule that temporarily suspends the general rules of the House, as it has frequently done in the past.

The SPEAKER. This rule says that the Committee on Rules shall not report such an order.

Mr. HENRY of Texas. But, Mr. Speaker, if the Committee on Rules should do it.

Mr. NORRIS. That is where my question comes in.

Mr. MANN. That is where my point of order comes in.

The SPEAKER. And suppose the Chair refuses to entertain a motion to consider a resolution from the Committee on Rules which contravenes the general rule referred to?

Mr. NORRIS. I want to ask the gentleman, Suppose any other committee does something which under the rules they are not allowed to do. The proper thing to call it to the attention of the Chair then is a point of order that they have gone beyond their jurisdiction. The Chair finds it has done that, then is it not the duty of the Chair to so hold that they have exceeded their power?

Mr. HENRY of Texas. Mr. Speaker, there is no controversy about that, but would the Chair hold that this rule can not be amended to-day or abrogated by a special rule and that it never can be changed because it is in the rules?

The SPEAKER. No; the Chair would not hold anything of the sort. You can report any rule which you see fit to put upon the books, but as long as that section stands there the Committee on Rules is precluded from bringing in such a resolution as this one. If you bring in a resolution amending the rules, that is a proposition which, of course, the Chair would entertain; but you are not bringing in a resolution to amend the rules, you are bringing in a resolution which violates a rule of the House.

Mr. HENRY of Texas. Mr. Speaker, the Committee on Rules does not intend to prevent a motion to recommit being made, but the gentleman from Illinois [Mr. MANN] is entirely incorrect in his diagnosis of the case in this instance. That is all there is to it. The Committee on Rules has no objection to a motion to recommit being made.

Mr. NORRIS. Will the gentleman allow another question? I want to ask the gentleman, Mr. Speaker, if the Committee on Rules brought in a rule here setting aside Calendar Wednesday by less than a two-thirds vote whether a point of order against that rule would be sustained by the Chair?

Mr. HENRY of Texas. Well, I think the Committee on Rules could bring in any special rule temporarily suspending the rules of this House, and if it was adopted by a majority vote, it would prevail.

Mr. NORRIS. But before it is adopted and somebody calls attention to it and makes the point of order. If that is not the right theory, then what effect does this rule have which says the Committee on Rules shall not bring in a rule setting aside Calendar Wednesday by less than a two-thirds vote.

Mr. HENRY of Texas. I think it is all buncombe.

Mr. FITZGERALD. Mr. Speaker, I wrote the provisions which are found in this rule. I drafted them myself, and they were drafted to obviate great abuses in this House. I do not believe that very many ever gave me much credit for the desire to accomplish that purpose, but that was the purpose. The Speaker will recollect that in the last Congress on several occasions when it was proposed to report special rules to the House from the Committee on Rules I called the attention of the committee to the fact that if those rules were reported without putting in the provision excepting the motion to recommit I should make a point of order against them when they were presented to the House. These provisions were designed to prevent two things being done—one was to prevent Calendar Wednesday from being set aside, in an indirect way, by less than a two-thirds vote by a limitation upon the extraordinary powers of the Committee on Rules, and the other was to prevent the Committee on Rules, at times when partisan advantage would make it politically expedient, to deny to the minority the right to have a vote upon some important matter by bringing in a rule to deprive the minority of that privilege. I believed the minority should not be deprived of that right when I was in the minority, and I never advocated a rule when I was in the minority that I am not willing to live under when I am a Member of the majority. [Applause.] If there is anything that can properly be asserted about the procedure of the House of Representatives, it is that the rules should be so framed that there would not be partisan controversies about them. Everyone should be willing to have the same rules apply to them, whether in the majority or minority in the House. [Applause.] The temptation to take advantage of the minority is so great that no party should ever be in a position where it can ride ruthlessly over them. Indeed, the whole theory of the rules of the House—and that is very frequently forgotten—is that they are framed to protect, not the majority, not to enable the majority to do business, but to protect the minority from the exercise of arbitrary power by the majority.

I do not believe that it was intended by this particular resolution that the motion to recommit should be denied to whoever should happen to be opposed to this particular bill, but I do say that the language of this resolution—

That at the expiration of such time the previous question shall be considered as ordered on the bill and said substitute to final passage, and that the House shall immediately proceed to vote on the bill and substitute without any intervening motion—

operates to violate the rule which places a prohibition upon the Committee on Rules to cut out the motion to recommit as provided in section 4 of paragraph 4, Rule XVI.

I do not know that the question has before been presented to the House. I do know that upon one occasion a rule was brought in making a bill a continuing order. My recollection is that the point of order was raised against it. I am not certain whether it was passed upon at that time, although the gentleman who was then Speaker said that the House, without objection, might adopt such a rule, which would make a bill a continuing order so as to eliminate Calendar Wednesday. The time was never reached, however, or no attempt was made under that special order to eliminate Calendar Wednesday. But unless the House is protected by the point of order, both of these rules could be made ineffective.

There is a rule, for instance, which prohibits the Speaker from entertaining a motion or a request that anybody, except those persons designated in the rule, be admitted to the floor of the House. One of the rules prevents the Speaker from entertaining the motion for a recess on Calendar Wednesday. He could not entertain those motions without violating the rules. If he attempted to do so, he could be prevented by raising the question of order. It seems to me that the gentleman's point of order as interposed must be sustained as to the rule, although I suppose there will be no objection if the gentleman from Texas [Mr. HENRY] should ask to modify the report by excepting the motion to recommit.

Mr. HENRY of Texas. This same provision was in the rule reported to consider pension bills the day the two gentlemen from Georgia, Mr. TRIBBLE and Mr. RODDENBERY, got up the opposition. But if there is any doubt about the question, I ask unanimous consent that the resolution be amended by adding at the end of line 12 the words:

Except a motion to recommit.

The SPEAKER. The gentleman from Texas [Mr. HENRY] asks unanimous consent to add at the end of the resolution the words:

Except a motion to recommit.

Is there objection?

Mr. MANN. Mr. Speaker, I reserve the right to object.

Mr. CANNON. Mr. Speaker, on the point of order I would like to make a remark, if the Chair will indulge me. This rule, if adopted by the House, would clearly cut off the motion to recommit. I recollect very well when the rule was adopted touching the motion to recommit, and the prohibition upon the Committee on Rules from reporting any special order for the consideration of the House that would prevent that motion being made.

It is somewhat interesting, Mr. Speaker, if I may be indulged for a moment, in the light of parliamentary disagreement in the House of Representatives, to just reminisce for a moment. There is a way, in the event the Chair should sustain the point of order upon this resolution reported by the Committee on Rules, by which this rule could be considered, and that would be an appeal from the decision of the Chair to the House, and the majority would then have a chance to overrule the Speaker when he sustains the point of order, if he should do so, to this provision in this rule.

The SPEAKER. The Chair would like to ask the gentleman from Illinois a question. Suppose somebody appealed from the decision of the Chair and somebody else moved to table, and the latter motion carried, how would you get an opportunity to discuss that proposition?

Mr. CANNON. After all is said and done, we are discussing it now. A majority of the House now, as always, can determine what it will do touching its order of business and touching legislation, rules or no rules. A majority of the House may violate every rule that is made, by a majority vote, and it has in the past so done as to some of the rules.

Mr. SHERLEY. Does the gentleman mean by that that the Chair ought to afford a majority of the House the opportunity to violate by an indirect attack a plain rule written into the regular standing rules of the House?

Mr. CANNON. I take it for granted that whoever is Speaker of this House, or whoever has been Speaker of this House in over a hundred years of existence, or whoever will be Speaker of this House, has ruled or will rule upon all questions of order as he believes he ought to rule.

Mr. SHERLEY. Oh, of course. But here is the practical proposition here——

Mr. CANNON. And it is always subject to an appeal.

Mr. SHERLEY. Of course.

Mr. CANNON. I have known Speakers of this House, when gentlemen have arisen to questions of the highest constitutional privilege, to decide upon the point of order that it is not a constitutional privilege. I have known an appeal to be taken by gentlemen against that decision, and I have seen a majority of the House overrule the Speaker. Aye, more. I have seen inside of 12 months a majority of the House reverse itself. We are always subject to a majority.

Now, one word in conclusion.

Mr. SHERLEY. I do not want the gentleman to conclude until I ask him a question.

Mr. CANNON. The Speaker has already, by a question, as I understand, as a Member of the House, substantially pointed the way by which this rule could be amended otherwise than by the Speaker being overruled by a majority, in the event there was a majority that would overrule him, on whatever decision he might make. If there be a czar now in existence in this House of Representatives, it is not the Speaker but the Committee on Rules, that, by reporting this rule, has announced its intention that it will be a czar and defy the rules when they write in "not subject to an intervening motion," which would nullify that rule. Sometimes, in the light of history, I wonder upon what meat does this our Cæsar, or our Cæsars, feed that they have grown so great.

Mr. HENRY of Texas. Will the gentleman yield for a moment?

The SPEAKER. Will the gentleman from Illinois [Mr. CANNON] yield to the gentleman from Texas [Mr. HENRY]?

Mr. CANNON. With pleasure.

Mr. HENRY of Texas. As I remember, exactly this same language was in the rule when the pension bills were considered. Why did not the gentleman think of his point of order then and make it against the consideration of the pension bills?

Mr. CANNON. Does the gentleman claim because his committee has played czar once and it was overlooked that that makes a precedent that permanently makes the gentleman and his committee a czar?

Mr. HENRY of Texas. I do not claim that we played the czar. There is a monopoly on that in another direction.

Mr. CANNON. Well, I have the honor to serve in the minority. This rule was made. I agreed that it was a proper rule when it was made; and if it is to be changed the gentleman can report a resolution from his committee changing it, and the House can then in its wisdom proceed to consider, amend, change, or adopt without amendment.

Mr. HENRY of Texas. Mr. Speaker——

The SPEAKER. The gentleman from Texas [Mr. HENRY] asks unanimous consent to modify this rule by adding, after the last word in it, the words "except a motion to recommit."

Mr. MANN. Mr. Speaker, if the gentleman from Texas will ask unanimous consent, not as a report from the Committee on Rules, but as offered by himself, for the adoption of the resolution with the modification, I shall not make a point of order upon it or object.

Mr. HENRY of Texas. I did not catch all that the gentleman said. Some one was talking to me.

Mr. MANN. If the gentleman himself will ask unanimous consent for the consideration of the resolution with the modification that he makes, not as a report from the Committee on Rules, I shall not object.

Mr. SHERLEY. I think that the gentleman from Texas must do that. He can now speak only of an amendment as an individual and not in behalf of the Committee on Rules, because the Committee on Rules have not considered the amendment which he proposes.

Mr. MANN. I understand. The gentleman has reported a rule from the Committee on Rules on which I have made a point of order.

Mr. HENRY of Texas. Mr. Speaker, this is an important matter, and in order to relieve the situation I submit the request in that form.

The SPEAKER. Is there objection?

Mr. NORRIS. Mr. Speaker, reserving the right to object, I would like to know just exactly what the gentleman's request is.

Mr. HENRY of Texas. That this resolution be considered now with an amendment added, "except a motion to recommit."

Mr. NORRIS. As I understand it, that comes from the gentleman as a Member of the House, and not from the Committee on Rules?

Mr. HENRY of Texas. Yes.

Mr. NORRIS. Now, I would like to say to the gentleman that it seems to me this rule, regardless of the bill to which it makes reference, is one that is contrary to good and fair practice in legislation.

Mr. MANN. I will say to the gentleman that of course the unanimous consent is not to pass the resolution, but simply to consider it.

Mr. NORRIS. Of course I recognize that the gentleman could call the Committee on Rules together and reintroduce the resolution.

Mr. HENRY of Texas. Yes; and I would do that in about three minutes.

Mr. NORRIS. Yes; and I would not want it understood, so far as I am personally concerned, that in permitting the gentleman to get unanimous consent for the consideration of the rule I gave acquiescence to the rule or to the method of procedure.

Mr. MANN. Well, of course we do not—any of us over here—give acquiescence to it.

Mr. NORRIS. I would not do that, even if I were heartily in favor of the bill. I would not want to adopt this rule even in that case.

Mr. DALZELL. Mr. Speaker, reserving the right to object, I would like to know what the gentleman proposes by way of debate and discussion on this rule, if it is to be taken up by unanimous consent.

The SPEAKER. If the gentleman will permit, this controversy has nothing to do with that. That will come up later.

Mr. DALZELL. As I understand, Mr. Speaker, the situation is this: This rule was improperly reported. It is not before the House and subject to amendment. The only way it can come up is by unanimous consent. I reserve the right to withhold consent until I can find out the mode that will be used in considering it. I do not think it is quite fair that the gentleman should be accorded unanimous consent for the consideration of this proposition.

Mr. HENRY of Texas. I think we can agree as to time, but of course I do not intend to be tied down on time. As to that the gentleman knows I am inclined to be liberal about time.

Mr. MANN. The gentleman from Pennsylvania expects to be reasonable about that.

Mr. HENRY of Texas. So do I.

Mr. DALZELL. I would like to know as to the time to be allowed for amendment and consideration.

Mr. HENRY of Texas. The rule provides for the offering of a substitute by the gentleman from Illinois [Mr. STERLING] and, as proposed to be amended, it allows a motion to recommit.

Mr. LENROOT. It is not the gentleman's intention to move the previous question immediately?

Mr. HENRY of Texas. Oh, no. This is such an important matter that we do not want to take any hurried action.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none, and the amendment is agreed to. The point of order raised by the gentleman from Illinois [Mr. MANN], of course, being withdrawn, under the circumstances——

Mr. MANN. The report of the committee is withdrawn, and the gentleman offered his amendment as an individual proposition.

The SPEAKER. If the House will permit, it seems to the Chair that it will save trouble in the future if the Chair will now give his own construction of this rule under which the gentleman made his point of order. The question is liable to come up again at any time. The last clause of paragraph 56 of Rule XI provides:

Nor shall it—

That is, the Committee on Rules—

report any rule or order which shall operate to prevent the motion to recommit being made as provided in paragraph 4 of Rule XVI.

Jefferson's Manual opens with this paragraph:

Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say, "It was a maxim he had often heard when he was a young man, from old and experienced members, that nothing tended more to throw power into the hands of administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, the rules of proceeding; that these forms, as instituted by our ancestors, operated as a check and control on the actions of the majority, and that they were, in many instances, a shelter and protection to the minority against the attempts of power."

The Chair does not think the essence of the proposition was ever better stated than it is in those words. Rules are made primarily to fix an order of business and to preserve and maintain decorum. But they are also fixed in order that the minority in the lump and the individual member shall have all the rights that are permissible in a legislative body.

It is not necessary to go into the history of how this particular rule came to be adopted, but that it was intended that the right to make the motion to recommit should be preserved inviolate the Chair has no doubt whatever. If this arrangement as to amending the resolution had not been made, the Chair would have sustained the point of order of the gentleman from Illinois [Mr. MANN]. The fact that the rule about the pension bill got through without anybody raising an objection is neither here nor there. The Chair supposes that nobody was enough opposed to it to raise the point, or everybody forgot it or neglected it. All rules, good or bad, ought to be enforced. Sometimes it may be inconvenient, but that does not matter. For instance, the gentleman from New York [Mr. FITZGERALD] cited a rule which the Chair has been compelled to enforce privately a dozen times, or perhaps a score of times. It is this: There is one motion which the Chair is prohibited from putting, and that is the motion to admit to the floor of the House anybody, great or small, whom the rules do not admit. I have had a dozen or a score of applications from people whom I would like very much to accommodate, to be permitted to come in on the floor of the House, and I have told them what the rule was. That rule is founded in good sense, and this one is founded in right; and the Chair will maintain the rule. I think it was left out on this occasion by inadvertence or something of the sort.

The Chair thought it was proper to make that statement now in order to save trouble in the future.

Mr. HENRY of Texas. Mr. Speaker, I will ask the gentleman from Pennsylvania [Mr. DALZELL] how much time he desires.

Mr. DALZELL. How much time does the gentleman suggest on the rule?

Mr. HENRY of Texas. It seems to me 20 minutes on a side on the rule ought to be sufficient. Three hours' general debate are allowed on the bill.

Mr. DALZELL. I do not think that is very generous. However, I will ask 25 minutes on a side.

Mr. HENRY of Texas. I have no objection.

Mr. MANN. Half an hour.

Mr. HENRY of Texas. Or even half an hour, if the gentleman wants it. I ask unanimous consent that the debate on the rule be limited to one hour, 30 minutes on a side.

The SPEAKER. The gentleman from Texas [Mr. HENRY] asks unanimous consent that the debate on the rule be limited to one hour.

Mr. HENRY of Texas. That at the end of the hour I have the right to move the previous question and the time to be controlled, 30 minutes by myself and 30 minutes by the gentleman from Pennsylvania [Mr. DALZELL].

The SPEAKER. And that at the end of the hour the gentleman from Texas has the right to move the previous question——

Mr. MANN. He has that right anyway.

Mr. HENRY of Texas. Yes; I understand that.

The SPEAKER. And that the time be controlled, one half by himself and the other half by the gentleman from Pennsylvania [Mr. DALZELL]. Is there objection?

There was no objection.

Mr. HENRY of Texas. Mr. Speaker, it is not my purpose to take up much time in the discussion of the rule, and I do not intend at this time to devote any attention to the discussion of the details of the proposed bill known as the Clayton anti-injunction bill.

I wish to say that this Congress is proceeding to carry out its promises to the American voters and that one platform pledge after another has been redeemed by this Democratic House.

Mr. Speaker, on yesterday the House submitted to the States an important amendment to the Constitution, which, in my judgment, is far-reaching and of vital concern to the people everywhere. In my opinion the election of United States Senators by a direct vote is one of the greatest reforms ever brought about by the American people, and I trust that that amendment will be speedily ratified by three-fourths of the States. [Applause.]

To-day we are here for the purpose of redeeming another platform pledge and to write in the statutes of the United States a decree that hereafter midnight injunctions issued by Federal judges shall not be tolerated under the laws of this country, and shall forever cease. [Applause.]

We have inveighed against the tyranny of Federal judges unjustly issuing injunctions. We have said that their powers should be curtailed, inasmuch as they are the mere creatures of this Government. We are not here for the purpose of assailing the judiciary. Every man in the Republic should have a salutary respect for the courts, because if we undermine the confidence of the people in the courts and undertake to destroy them we imperil the very genius and spirit of our Government.

What have we promised the people? Let me call the attention of this House to our platform pledge, which we are this day redeeming by the passage of this measure:

The courts of justice are the bulwark of our liberties, and we yield to none in our purpose to maintain their dignity. Our party has given to the bench a long line of distinguished justices, who have added to the respect and confidence in which this department must be jealously maintained. We resent the attempt of the Republican Party to raise a false issue respecting the judiciary. It is unjust reflection upon a great body of our citizens to assume that they lack respect for the courts.

It is the function of the courts to interpret the laws which the people create, and if the laws appear to work economic, social, or political injustice it is our duty to change them. The only basis upon which the integrity of our courts can stand is that of unswerving justice and protection of life, personal liberty, and property. If judicial processes may be abused, we should guard them against abuse.

Experience has proven the necessity of a modification of the present law relating to injunctions, and we reiterate the pledge of our national platform of 1896 and 1904 in favor of the measure which passed the United States Senate in 1896, but which a Republican Congress has ever since refused to enact, relating to contempts in Federal courts and providing for trial by jury in cases of indirect contempt.

Questions of judicial practice have arisen, especially in connection with industrial disputes. We believe that the parties to all judicial proceedings shall be treated with rigid impartiality, and that injunctions should not be issued in any cases in which injunctions would not issue if no industrial dispute were involved.

Mr. Speaker, that is the decree of the Democratic Party, adopted at Denver four years ago. Thrice has the Democratic Party declared in favor of this legislation, and now that the people have given us their confidence and placed us in control of this branch of Congress we propose to redeem that pledge and to send it to the other body.

Mr. Speaker, let no one misunderstand the attitude of the Democratic Party. We are not opposed to wealth legitimately acquired. We are not opposed to corporations and legitimate corporate interests, but are opposed to the abuses that have been indulged in by some who have acquired vast amounts of money, who have combined great interests and corporations together as trusts. We are against these things, and, so far as we can, shall endeavor to bring relief to the American people by passing this measure and others similar to it that will bring about the result that we desire.

Mr. Speaker, the Democratic Party does not wish to array one class of citizens against another class. He would indeed be a dangerous citizen who would endeavor to array the poor man against his richer brother because he happens to be wealthy by legitimate thrift. Such spirit could not be tolerated. We all know, and it is admitted, that the Federal courts, the mere creatures of Congress, have exceeded the authority originally conferred upon them by our fathers, and the time has come to call a halt. The time has arrived when we should take

them within our jurisdiction and set the limits and say, "Thus far shall the Federal judges go, and no farther."

The Clayton bill does that, and, in my judgment, when it is written into our permanent jurisprudence it will be there to remain, for it is in behalf of the American people and against those who would pervert our institutions. [Applause.]

So, Mr. Speaker, I think that the time is now opportune to pass this bill. In a short while another measure will be presented, and I believe it will commend itself to the honest judgment of this body and the American people. I refer to the measure providing for a trial by jury in cases of indirect contempt. That measure has already been agreed upon by the Committee on the Judiciary and reported to this House, and when it is passed, in connection with the one we are now considering to-day, then the Democratic Party will have redeemed its pledges. All we can do is to bring them before the House and let the Members consider them; and although the gentleman from Illinois refers to the Committee on Rules as assuming the prerogatives of a "*czar*," I undertake to say that the Committee on Rules has brought before the Sixty-second Congress more salutary and just measures than ever came before this body during his incumbency of eight years as Speaker of the House.

It is not necessary for me to review them, but I will refer to a few of them: The parcel post, the publicity bill, this injunction measure, the bill defining contempts, the trial by jury in cases of indirect contempt, and many other meritorious measures that the great body of the Democrats in caucus have demanded to be considered; the revision of the tariff, taking the burden off of the backs of the people—all these measures the gentleman from Illinois stifled and prevented consideration of while he occupied the Speakership.

So, Mr. Speaker, we are here again to-day to allow the Members to vote on these questions. We are allowing one substitute to be offered, which is sufficient. We are willing to authorize a motion to recommit, which ought to be much more than sufficient; but at any rate, the membership can take any course it desires. They can adopt either measure that appeals to them, and can exercise their choice in the pending matters of legislation. There is no endeavor now to thwart their will. [Applause.] Mr. Speaker, I reserve the balance of my time.

Mr. DALZELL. Mr. Speaker, if this rule is adopted it will be in order for the House to consider the bill reported from the Committee on the Judiciary, which deals with the subject of injunctions. There is a provision in the bill relative to the notice to be given on application for an injunction or restraining order, for the security to be given in case the injunction is granted, and some other provisions relative to procedure, which, in my judgment, are matters of great importance.

But aside from these the bill goes on to provide for certain things which thoroughly revolutionize the law in injunction cases in this country, and they are of such tremendous importance that it seems to me they deserve the most serious consideration on the part of the membership of the House at this time. The bill provides that in a labor dispute, where there is a dispute between employer and employee, or between employees, there can be no preliminary injunction or restraining order issued unless it be necessary to prevent irreparable injury or where there is no adequate remedy at law.

An injunction is confined by this bill to the defense of property and property rights. Now, I have sought information as to what was meant by the term "property rights," but I have been unable to get any satisfactory information upon that subject. My conclusion, therefore, is simply the conclusion to be arrived at from the surrounding circumstances. It has long been contended upon the part of certain persons in this country, notably labor organizations, that outside of property, courts of equity had no jurisdiction—I mean, tangible property; that the right to do business, the good will, personal rights, are entirely outside of the proper functions of a court of equity in exercising injunction jurisdiction.

A bill was introduced into this House, and improperly referred to the Committee on Labor, regulating this subject. That bill is reported and is now before the House. In that bill provision is made that injunctions or restraining orders shall not issue to protect what are here called property rights, and they do not include the right to do business. I apprehend, taking into consideration the fact that that bill was introduced after the Committee on the Judiciary had refused to report a bill containing any such proposition, this term "property rights" in this bill is a provision whereby the committee, instead of openly and courageously and avowedly adopting the language and purpose of the bill reported by the Committee on Labor, evasively and indirectly seeks to accomplish the same purpose. So I apprehend that I state the case fairly when I say that under the provisions of this bill there can not be in a labor dispute any injunction or restraining order, unless to prevent irreparable damage, or where there is no adequate remedy at law, and that in such case injunction shall extend only to protect tangible property. The bill then goes on to provide that there are certain cases in which there shall be no injunction or restraining order, whether there be irreparable damage or not. That is the plain meaning of the bill.

The bill also goes on to say—

> And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising—

And so forth.

Naming a number of specific cases. That is to say, where there exists such irreparable injury or lack of an adequate remedy at law to such an extent as to justify or authorize a court of equity to grant a restraining order or injunction, even in that case there are certain acts that are outside of the law and which can not be reached by a court of equity. That is true in the case of strikes. Suppose an injunction be issued for some cause upon the ground of irreparable injury to ensue or because there is no adequate remedy at law. The injunctive process in that case will not reach a strike or could not prohibit and prevent anything to be done by the strikers without regard to whether there was an irreparable injury or lack of an adequate remedy at law.

Mr. BARTLETT. Mr. Speaker——

Mr. DALZELL. Oh, the gentleman from Kentucky [Mr. SHERLEY] shakes his head, and I have no doubt he has examined this bill, and I have very great respect for his judgment, but the fact that he and I differ as to the construction of this bill only illustrates how unjust it is to call upon this assembly at this time—the representatives of the American people—to dispose of this question after three hours of perfunctory debate; and that is the vice of the rule.

Mr. SHERLEY. Will the gentleman yield?

Mr. DALZELL. I have not very much time, but I will yield.

Mr. SHERLEY. The gentleman took occasion to call attention to the gentleman from Kentucky when he had not interrupted him at all. Does not the difference of opinion simply show that men sometimes read a statute in a different way? In this case the gentleman prefaces his whole statement on not what the words "property or property rights" will mean, but on what he thinks they must mean because of another bill that is not now before the House?

Mr. DALZELL. Well, I am not discussing that question now, and I am willing to leave my construction of the bill to the judgment of the gentlemen who have heard me.

Mr. BARTLETT. Will the gentleman yield? I do not want to take up the gentleman's time——

Mr. DALZELL. I hope the gentleman will not take up my time.

Mr. BARTLETT. Then I beg the gentleman's pardon. I had forgotten his time was limited.

Mr. DALZELL. One of the particular acts that are removed from the injunctive process by this bill are strikes. Strikes are legalized upon the one hand, and the blacklist is legalized upon the other hand. Another are boycotts. They are legalized—not simply primary boycotts, but the secondary boycott—where parties not parties to the dispute—innocent parties who have no remedy at law—are deprived of the protective arm of a court of equity. Picketing is legalized, and it matters not to what extent the picketing may reach, it matters not that it may amount to a mob and result in destruction of property, under the provisions of this bill the party who is injured is removed from the protecting arm of the court of equity. Not only that, but this bill repeals the Sherman antitrust law in so far as labor combinations are concerned. It matters not what may be the character of the conspiracy, it matters not how much it may interfere with interstate commerce, the men who are guilty of that conspiracy and who are interfering with commerce are removed from the restraints of the law.

Mr. BARTLETT. Mr. Speaker——

Mr. DALZELL. In other words, this bill selects a certain class of a community whom it makes not amenable to the law and selects another class of the community from whom it takes the protection of the law. It is to that extent, in my judgment, unconstitutional. Not only that, but it repeals the law of conspiracy. All the acts which were done in the Danbury hatters case, all the acts which were done in connection with the Pullman car strike, all the acts which were done in connection with the attempted paralyzing of the railroad industries in this country, all such acts as these are legalized by this act. Under this bill there can be no injunction against a strike, a boycott,

or a picketing, no matter what their consequences may be. Now, if that be so—and I am willing to stand upon my construction of the terms of this bill—if that be so, is not it true that this House is entitled to have the most thorough consideration, an opportunity for the most matured deliberation, before it passes upon a measure of such importance, a measure so far-reaching in its consequences, so vital to the interests of life and property in this country? And what sort of consideration are you going to have under this rule? Three hours of general debate, three hours of perfunctory debate, without any opportunity to amend. You must take this bill or leave it without the crossing of a "t" or the dotting of an "i" on the part of the representatives of the American people dealing with legislation of this character. I say, and I say that with knowledge, that there never was brought into this House a rule which showed so much of tyrannical, unreasonable power on the part of the majority as is to be found in the provisions of this rule. Whom are you afraid of, gentlemen? Not afraid of Members on this side of the House. We have not votes enough on this side of the aisle to amend or modify or in anywise effect any legislation that you may see fit to propose. It is not the membership on this side of the House of whom you are afraid. It is the membership upon your own side of the House. You gentlemen know that you have Members who would be unwilling to take this legislation in the shape in which it is proposed if they had an opportunity to do otherwise. You have had no caucus on this bill so as to gag Members on that side of the House in respect to this legislation, but you propose to gag them now by this rule. You are gagging not only us, but gagging yourselves.

I do not propose to take up any more time in a discussion of the merits of this proposition. They will be discussed hereafter, in so far as they can within the limited extent of three hours' debate, but I want to insist that this rule is an unjust proposition, one that shows that you gentlemen are not standing by the professions which you made when you proceeded to revise the rules of this House and promised that hereafter the membership of the House should have free and unlimited debate upon all propositions of the character of this proposition now before the House. Mr. Speaker, I reserve the balance of my time.

Mr. BARTLETT. May I ask the gentleman a question, which will only take a moment? Did not the gentleman have it in his power to object to the consideration of this particular proposition a few minutes ago, and did he object?

Mr. DALZELL. I do not think the gentleman is quite fair in accusing me.

Mr. BARTLETT. I am not accusing the gentleman. I am asking the gentleman a question. I do not make an accusation.

Mr. DALZELL. I could have objected if I had been mean enough to do it.

Mr. GARNER. Will the gentleman from Pennsylvania yield? He made his statement that this bill repealed the antitrust law in regard to labor unions. I would like to ask him in what section of the bill?

Mr. DALZELL. All of them. It repeals the law of conspiracy. I can not yield to the gentleman. How much time have I used?

Mr. HENRY of Texas. Mr. Speaker, I yield five minutes to the gentleman from Pennsylvania [Mr. WILSON].

Mr. WILSON of Pennsylvania. Mr. Speaker, the subject matter contained in the bill which it is proposed to consider under this rule is no new question. It has been considered and discussed from every political platform in this country. It has been reviewed from all its angles, and it occurs to me that we do not require at this time any more than three hours in which to consider it in this House.

The assumption on the part of those who are opposing this measure is that labor, and particularly organized labor, is asking at the hands of Congress some immunity from the operations of the law; that they are asking that they shall be given some special privileges under the law.

But they are not asking anything of the kind. What they are asking is that they shall be considered fairly and treated justly under the law, the same when they have a trade dispute as when there is no trade dispute in existence. Under the methods that have grown up in our equity courts, the jurisdiction of the equity courts has been extended in cases arising during trade disputes to the jurisdiction of our law courts, and the assumption has been on the part of the equity courts that the employer of labor has a property right in a sufficient amount of labor to operate his plant. No such property right does or can exist unless the laborer himself is a serf or a slave. The workingman is just as much a free man as the employer. Some of our State courts and some of our Federal courts have laid down the principle that the employer is entitled to a free flow of labor to the gates of his factory, and when they have laid down that principle they have failed to take into consideration that the flow of labor is a flow of living, animate, intelligent beings that have a right to move to the gates of the factory or away from the gates of the factory as they see fit.

Injunctions have been issued in labor disputes by which men have been restrained from committing crimes, and when that jurisdiction has been assumed by the equity courts they have invaded the province of the law courts, and by invading the province of the law courts they have taken away from the workingman that protection which the Anglo-Saxon race has fought for for over a thousand years, namely, the protection of a trial by jury so as to determine the fact.

They have gone further than that. They have issued injunction by which men during labor disputes have been restrained from persuading their neighbors to engage with them in particular disputes. They have enjoined men from placing their patronage where they pleased or refusing to place it where they pleased. And this rule ought to be adopted at this time for the consideration of this measure, so that these and many other invasions of human rights may be abolished. [Applause.]

The SPEAKER. The time of the gentleman from Pennsylvania [Mr. WILSON] has expired.

Mr. HENRY of Texas. Mr. Speaker, I yield five minutes to the gentleman from New Jersey [Mr. HUGHES]. [Applause.]

[Mr. HUGHES of New Jersey addressed the House. See Appendix.]

Mr. DALZELL. Mr. Speaker, I yield 10 minutes to the gentleman from Wisconsin [Mr. LENROOT].

The SPEAKER. The gentleman from Wisconsin [Mr. LENROOT] is recognized for 10 minutes.

Mr. LENROOT. Mr. Speaker, I do not object to a special rule for the consideration of this very important subject. I do object to some of the provisions contained in this rule, and I wish to give notice now that if the previous question shall be voted down, I shall offer amendments to this rule, leaving three hours for consideration, as is proposed in the rule, but instead of three hours of general debate, there shall be one hour of general debate and two hours devoted to amendments and debate under the five-minute rule. And it should be thoroughly understood that when the gentleman from Texas [Mr. HENRY] moves the previous question, a vote for the previous question is a vote against the right of this House to offer amendments to this bill.

Mr. Speaker, there is an old saying that the leopard can not change his spots. But the Democratic majority can, and it proposes to do so in this instance, unless there shall be a sufficient number of men on that side of the House who have more regard for consistency, who have more regard for the pledges they have made to their constituents, than they have for the mere matter of a majority voting as one body.

Mr. Speaker, upon a previous occasion, when a rule somewhat similar to this was introduced in this House and adopted, I quoted from distinguished Members of this House as to how, when they were in the minority, they looked upon rules of this character, and I am going now to make some of those quotations again, for they can not be quoted too often. And first I quote the distinguished Speaker of the House himself, who presides over this House with so much ability and fairness. When the Payne tariff bill was before this House and there was a curtailment of the right of amendment by a special rule proposed by the majority upon that bill, a great tariff bill, involving thousands of items, when there was some reason for curtailing the power of amendment, this is what the present Speaker of the House said at that time:

> The situation in this matter is this: I am against this rule and every rule like it. My position is that the humblest man in this House, the veriest congressional tenderfoot here, has the right to offer an amendment to any item of this bill from A to Z.

That was the opinion of your Speaker then upon a great tariff bill, while here is a bill four pages long, containing three sections only, and yet you are asked to go squarely back upon the position which you then took when you were in the minority. And I am anxious, if I may say it, to know whether the distinguished Speaker himself, when the vote comes upon the previous question in half an hour from now, will maintain the position that he took when he was in the minority or whether by his vote to-day he will say before the country, "I was not sincere when I said those things then, and now that we are in the majority I propose to do the very things that we condemned Cannonism for doing." For, gentlemen on the other side, your vote for the previous question means that and nothing else.

Now, I will quote another distinguished gentleman, the distinguished leader of the majority [Mr. UNDERWOOD]. He said:

The rules of this House for a hundred years have recognized that when you come to consider a great appropriation bill, or a great revenue bill, the only way the House can express the sentiments of the country and the Members can express the sentiments of their constituents is to consider the items contained in the bill item by item—

Again pleading for the right of amendment, which you propose to deny to the House now. And here we have two of your distinguished candidates for the Presidency of the United States. I wonder whether, in the votes that they shall shortly cast, they will take the position that they are going to be consistent with the principles that they advocated then or whether they are not. And the American people are going to be interested in knowing that.

One more quotation, Mr. Speaker, and that is from the distinguished gentleman from New York [Mr. FITZGERALD], who said upon that occasion:

I have that confidence in the House of Representatives that if I had my way I would be willing to permit this bill to be considered section by section, item by item, so that the people's representatives might have an opportunity to discharge their duties. I shall await with some curiosity to see how those who have been recently professing themselves as anxious to relieve this House from the so-called system of tyrannical rules will vote at this time upon this rule.

And I shall await with a great deal of curiosity how those gentlemen to-day will vote upon this rule.

But, Mr Speaker, more than that, there should be the right of amendment to this bill. The gentleman from Pennsylvania [Mr. WILSON], who has preceded me, has reported from his committee a bill known as the Bartlett bill, and one-half of that bill is upon the identical subject that this bill covers. Those bills ought to be considered together, because some of their provisions are absolutely inconsistent. The gentleman from Georgia [Mr. BARTLETT] or the gentleman from Pennsylvania [Mr. WILSON] ought to have an opportunity to offer as an amendment to this bill that portion of the Bartlett bill that does cover this subject. How else can you legislate consistently upon it?

Mr. BARTLETT. Mr. Speaker, may I interrupt the gentleman?

The SPEAKER. Does the gentleman from Wisconsin yield to the gentleman from Georgia?

Mr. LENROOT. Yes.

Mr. BARTLETT. The gentleman is a member of the Committee on Rules, and a resolution is pending before that committee to report out the Bartlett bill?

Mr. LENROOT. Yes; and I want to report it out. But I want to say to the gentleman that if you pass that bill it nullifies a portion of this. There is no doubt about that. These measures ought to be considered together.

Mr. BARTLETT. I think so.

Mr. LENROOT. Then, if the gentleman thinks so, he will vote against the previous question and give an opportunity to this House to consider them together.

Mr. BARTLETT. May I interrupt the gentleman a moment? I have no time, but I want to say that every labor organization in my State has sent me telegrams insisting that the bill now before the Committee on Rules known as the Bartlett bill shall be voted on.

Mr. LENROOT. If the gentleman will vote against the previous question, that will be a vote to give an opportunity to offer his bill as an amendment to this, and if that is agreed to he will have an opportunity to serve his constituents in that way.

Mr. BARTLETT. I think I will.

Mr. LENROOT. Now, Mr. Speaker, another word in closing. I shall not reveal any secrets of the Committee on Rules, nor do I wish to; but when this Congress first organized, when the majority members of the Committee on Rules desired to bring into this House a drastic rule, they did not know how to draw it, and so they invariably went to the gentleman from Pennsylvania [Mr. DALZELL], and he very kindly drew their rules for them.

Mr. GARNER. He is recognized to be an expert in that business.

Mr. LENROOT. But they are no longer doing that. They have become experts themselves now and can go far beyond anything that the gentleman from Pennsylvania [Mr. DALZELL] ever did. In fact, in this very rule they went so far beyond him, attempting to bring in a rule so much more drastic than he ever drew, that the Speaker of this House this morning was compelled to hold the rule out of order because it was more drastic than even the jurisdiction, broad as it is, of the Committee on Rules permitted. [Applause.]

The SPEAKER. The time of the gentleman from Wisconsin has expired. If no other gentleman desires to discuss this question the Chair will put it.

Mr. HENRY of Texas. Mr. Speaker, I yield five minutes to the gentleman from Illinois [Mr. BUCHANAN].

Mr. BARTLETT. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. BARTLETT. Did the gentleman from Texas have control of the time? I did not understand that to be a part of the agreement.

The SPEAKER. The agreement was that half the time should be controlled by the gentleman from Texas and the other half by the gentleman from Pennsylvania.

Mr. BARTLETT. I understood the agreement to be that the time was to be equally divided between the two sides.

The SPEAKER. It was to be equally divided, but the control of it was to be as the Chair has stated.

[Mr. BUCHANAN addressed the House. See Appendix.]

Mr. HENRY of Texas. Mr. Speaker, I ask unanimous consent to revise and extend my remarks in the RECORD.

The SPEAKER. The gentleman from Texas asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. DALZELL. I yield the rest of my time to the gentleman from Nebraska [Mr. NORRIS].

The SPEAKER. The gentleman from Nebraska [Mr. NORRIS] is recognized for six minutes.

Mr. NORRIS. Mr. Speaker, I want, if I can, to get the House back to the parliamentary situation and to the issue that is now before us. I want to call your attention to the fact that the bills that have been mostly discussed by gentlemen who have so far talked on this subject, are not now before the House.

We have here a rule, and nothing except the rule is now before the House. Upon that rule we are soon to be called upon to vote. I am not criticizing any man for his views upon the subject of this legislation, but I do contend that there is no justice, no fairness, and no patriotism in the adoption of rules of this kind, ironclad as this one is. I am in favor of legislating on this subject, but it ought to be done by the House. It is no relief that we are to be allowed three hours of general debate. What good does it do to be allowed to talk, if we are not allowed to propose amendments? Three or four men bring in a bill, and this rule says we must take it as a whole or reject it as a whole, except that one Member of the House shall be given the extraordinary privilege of offering an amendment by way of substitute.

We have here a rule which says that a certain bill shall be immediately taken up after the rule is adopted. That is a bill consisting of four sections, less than four pages long. The rule says that after general debate of three hours it shall be in order for one gentleman of the House, the gentleman from Illinois [Mr. STERLING], to offer an amendment by way of a substitute. Why am I deprived of my constitutional right, that ought to be preserved, to offer an amendment to this bill? Why has the gentleman who has just left the floor, who said he would rather have a broader bill—why is he deprived of his right to offer an amendment to this bill? Why, out of a membership of 391, do we come only to the gentleman from Illinois and say that he shall be accorded the distinction of offering an amendment? Why should not this bill come before the House like any other bill and every Member who has an amendment to offer be allowed to offer it? Why should this bill, not much longer than your finger, be put through the House without any man having a right to even suggest an amendment? Is that liberty; is that freedom of representation? Are not my people just as good, just as intelligent, just as patriotic, just as wise as the people represented by the gentleman from Illinois [Mr. STERLING]? How about all you people over here? Do you believe this is a square deal? Do you think it is square to take this bill up and say, "Gentlemen, you must take this bill just as we have prepared it, or you must take an amendment that only one man in the world shall have the privilege of offering in its stead"? How many of you on this side of the House have had anything to do with the framing of that little piece of legislation?

Mind you, I do not criticize the men who did frame it. There are very many good things in it, but it is not perfect, and why should we tie our hands by the adoption of this rule that will deprive us of the right of offering amendments? I am in sympathy with the legislation, but if I were the author of it, it seems to me I would be usurping your privileges, your

people's privileges, if I should say to you, "I will draw this bill, and you must take it as I draw it or you must reject it."

That is not the way to legislate. That is not the way the people of this country expect us to legislate, and I want to say to you, my Democratic friends, it will be no answer before the people to say that the Republicans, when they were in power, pursued the same course. I condemned that method when my party was in power, and so did you. I am of the same opinion now. Why have you changed yours? Why not let this bill come before the House with the right of amendment? Why should we refuse to let every man here have the right to offer amendments? What does three hours of general debate mean?

Mr. RUCKER of Colorado. Will the gentleman yield?

Mr. NORRIS. My time is very short, but I will yield to the gentleman.

Mr. RUCKER of Colorado. The gentleman is not complaining that he has not had the opportunity to move an amendment or to bring in a bill or report because he is a member of the committee?

Mr. NORRIS. Exactly; but that does not make any difference. Although I am a member of the committee that reported it, I am excluded the same as my friend from Colorado is, and I ought to be. I ought to have no more privileges here than he, and no one else ought to have any more than I. I plead only for equality, and we ought to vote down this rule. [Applause.]

The SPEAKER. The time of the gentleman from Nebraska has expired.

Mr. HENRY of Texas. Mr. Speaker, let the House understand the attitude of the gentleman from Nebraska. The distinguished insurgent insurges on the slightest provocation. Let me say that when his party was in power in this House they would not let this injunction legislation be considered in any form. [Applause.]

Mr. Speaker, if the previous question is voted down and this legislation submitted to that side of the House, they would devour everything in the bill that is good.

The gentleman's motive for wanting the previous question voted down is to create confusion and gain delay of legislation we are about to pass. The gentleman from Pennsylvania [Mr. WILSON], who is a better friend to labor legislation than is the gentleman from Nebraska, has spoken favoring the previous question, and the gentleman from New Jersey has spoken in favor of adopting the previous question, and is for this bill because he knows that the provisions are correct, and the gentleman from Illinois [Mr. BUCHANAN], than whom there is no better friend to the laboring man in this country [applause], has spoken advocating the previous question and favors the bill. He is not so weak, nor is anyone on this side of the House, as to throw down the bars and let you gentlemen assault the good features of this legislation. If you are in favor of the measure, when the time comes, vote for it. We allow you to offer one amendment when you would not allow us to even consider the subject. You may do more, you may offer a substitute and, after that, a motion to recommit and assert your views as to the kind of legislation you think we should have. And when you do it, if it is not a better bill, we will stand ready to pass *this one* and vote you down. This legislation has been agreed to by those who really favor it, and they think it is of the best character obtainable at this time, and therefore the previous question should be adopted and the rule passed.

Mr. Speaker, I move the previous question.

Mr. MANN. And on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 174, nays 99, answered "present" 9, not voting 110, as follows:

YEAS—174.

Adair	Candler	Estopinal	Hammond
Adamson	Cantrill	Evans	Hardy
Aiken, S. C.	Carter	Faison	Harrison, Miss.
Alexander	Clayton	Farr	Harrison, N. Y.
Allen	Cline	Fergusson	Hay
Anderson, Ohio	Collier	Ferris	Hayden
Ansberry	Connell	Finley	Henry, Tex.
Ashbrook	Conry	Fitzgerald	Hensley
Austin	Covington	Floyd, Ark.	Hobson
Barnhart	Cravens	Foster	Holland
Bathrick	Cullop	Fowler	Houston
Bell, Ga.	Daugherty	Francis	Howard
Blackmon	Davis, W. Va.	Fuller	Hughes, Ga.
Boehne	Dent	Gallagher	Hughes, N. J.
Booher	Denver	Garrett	Hull
Borland	Dickinson	George	Humphreys, Miss.
Brantley	Dickson, Miss.	Glass	Jacoway
Broussard	Difenderfer	Goodwin, Ark.	Johnson, Ky.
Buchanan	Dixon, Ind.	Gould	Jones
Bulkley	Doremus	Graham	Kendall
Burke, Wis.	Doughton	Gregg, Pa.	Kent
Burleson	Driscoll, D. A.	Gregg, Tex.	Kinkead, N. J.
Byrnes, S. C.	Dupré	Hamill	Kitchin
Byrns, Tenn.	Edwards	Hamilton, W. Va.	Konop
Callaway	Ellerbe	Hamlin	Korbly
Lee, Ga.	Oldfield	Russell	Taylor, Colo.
Lever	O'Shaunessy	Saunders	Thayer
Lewis	Padgett	Sharp	Thomas
Linthicum	Page	Sherley	Townsend
Lloyd	Pepper	Sherwood	Tribble
Lobeck	Peters	Sims	Turnbull
McCoy	Post	Small	Tuttle
McDermott	Pou	Smith, J. M. C.	Underhill
McLaughlin	Rainey	Smith, N. Y.	Underwood
Macon	Raker	Smith, Tex.	Watkins
Maguire, Nebr.	Rauch	Stanley	Webb
Martin, Colo.	Redfield	Stedman	Wedemeyer
Moon, Tenn.	Reilly	Stephens, Miss.	White
Moore, Tex.	Roberts, Nev.	Stephens, Nebr.	Wickliffe
Morgan	Rothermel	Stephens, Tex.	Wilson, Pa.
Morrison	Rouse	Stone	Witherspoon
Moss, Ind.	Rubey	Sulzer	Young, Tex.
Murray	Rucker, Colo.	Sweet	
Neeley	Rucker, Mo.	Talcott, N. Y.	

NAYS—99.

Ainey	Fairchild	La Follette	Pray
Akin, N. Y.	Fordney	Langley	Prince
Ames	Foss	Lawrence	Prouty
Anderson, Minn.	French	Lenroot	Rees
Anthony	Gardner, N. J.	Lindbergh	Roberts, Mass.
Bartholdt	Garner	Loud	Roddenbery
Bowman	Good	McCreary	Slayden
Browning	Gray	McGuire, Okla.	Slemp
Butler	Green, Iowa	McKenzie	Sloan
Calder	Greene, Mass.	McKinley	Smith, Saml. W.
Cannon	Hamilton, Mich.	McKinney	Steenerson
Catlin	Hanna	Madden	Stephens, Cal.
Cooper	Harris	Malby	Sterling
Copley	Hayes	Mann	Stevens, Minn.
Crago	Helgesen	Miller	Towner
Crumpacker	Henry, Conn.	Mondell	Utter
Currier	Higgins	Moon, Pa.	Volstead
Curry	Hill	Moore, Pa.	Vreeland
Dalzell	Howell	Morse, Wis.	Wilder
Davis, Minn.	Jackson	Needham	Willis
De Forest	Kennedy	Nelson	Wilson, Ill.
Dodds	Kinkaid, Nebr.	Norris	Wood, N. J.
Driscoll, M. E.	Knowland	Nye	Young, Kans.
Dyer	Kopp	Payne	Young, Mich.
Esch	Lafean	Powers	

ANSWERED "PRESENT"—9.

Beall, Tex.	Fornes	Martin, S. Dak.	Talbott, Md.
Davenport	Gillett	Sparkman	Tilson
Dwight			

NOT VOTING—110.

Andrus	Gardner, Mass.	Legare	Richardson
Ayres	Godwin, N. C.	Levy	Riordan
Barchfeld	Goeke	Lindsay	Robinson
Bartlett	Goldfogle	Littlepage	Rodenberg
Bates	Griest	Littleton	Sabath
Berger	Gudger	Longworth	Scully
Bradley	Guernsey	McCall	Sells
Brown	Hardwick	McGillicuddy	Shackleford
Burgess	Hartman	McHenry	Sheppard
Burke, Pa.	Haugen	McKellar	Simmons
Burke, S. Dak.	Hawley	McMorran	Sisson
Burnett	Heald	Maher	Smith, Cal.
Campbell	Heflin	Matthews	Speer
Carlin	Helm	Mays	Stack
Cary	Hinds	Mott	Sulloway
Clark, Fla.	Howland	Murdock	Switzer
Claypool	Hubbard	Olmsted	Taggart
Cox, Ind.	Hughes, W. Va.	Palmer	Taylor, Ala.
Cox, Ohio	Humphrey, Wash.	Parran	Taylor, Ohio
Curley	James	Patten, N. Y.	Thistlewood
Danforth	Johnson, S. C.	Patton, Pa.	Vare
Davidson	Kahn	Pickett	Warburton
Dies	Kindred	Plumley	Weeks
Donohoe	Konig	Porter	Whitacre
Draper	Lafferty	Pujo	Wilson, N. Y.
Fields	Lamb	Randell, Tex.	Woods, Iowa
Flood, Va.	Langham	Ransdell, La.	
Focht	Lee, Pa.	Reyburn	

So the previous question was ordered.

The Clerk announced the following pairs:

On this vote:

Mr. BARTLETT with Mr. LONGWORTH.

For one week:

Mr. BROWN with Mr. LANGHAM.

Ending May 21:

Mr. BURGESS with Mr. WEEKS.

For two weeks:

Mr. SHACKLEFORD with Mr. DRAPER:

Until further notice:

Mr. CLARK of Florida with Mr. DANFORTH.

Mr. BEALL of Texas with Mr. HAWLEY.

Mr. HELM with Mr. RODENBERG.

Mr. JAMES with Mr. MCCALL.

Mr. TALBOTT of Maryland with Mr. PARRAN.

Mr. LITTLETON with Mr. DWIGHT.

Mr. HARDWICK with Mr. CAMPBELL.

Mr. SPARKMAN with Mr. DAVIDSON.

Mr. SISSON with Mr. TILSON.

Mr. SHEPPARD with Mr. BATES.

Mr. COX of Ohio with Mr. TAYLOR of Ohio.

Mr. MAYS with Mr. THISTLEWOOD.

Mr. SABATH with Mr. MATTHEWS.

Mr. DAVENPORT with Mr. BURKE of South Dakota.
Mr. PUJO with Mr. MCMORRAN.
Mr. RANDELL of Texas with Mr. SELLS.
Mr. KINDRED with Mr. PORTER.
Mr. JOHNSON of South Carolina with Mr. GILLETT.
Mr. RICHARDSON with Mr. MARTIN of South Dakota.
Mr. AYRES with Mr. BARCHFELD.
Mr. BURNETT with Mr. BURKE of Pennsylvania.
Mr. CARLIN with Mr. CARY.
Mr. CLAYPOOL with Mr. FOCHT.
Mr. COX of Indiana with Mr. GRIEST.
Mr. CURLEY with Mr. GUERNSEY.
Mr. DIES with Mr. HARTMAN.
Mr. DONOHOE with Mr. HAUGEN.
Mr. FLOOD of Virginia with Mr. HEALD.
Mr. GODWIN of North Carolina with Mr. HINDS.
Mr. GOEKE with Mr. HOWLAND.
Mr. GOLDFOGLE with Mr. HUBBARD.
Mr. GUDGER with Mr. HUGHES of West Virginia.
Mr. KONIG with Mr. HUMPHREY of Washington.
Mr. LAMB with Mr. KAHN.
Mr. LEE of Pennsylvania with Mr. LANGHAM.
Mr. LEGARE with Mr. LAFFERTY.
Mr. LEVY with Mr. MOTT.
Mr. LITTLEPAGE with Mr. MURDOCK.
Mr. MCGILLICUDDY with Mr. OLMSTED.
Mr. MCKELLAR with Mr. PATTON of Pensylvania.
Mr. MAHER with Mr. PICKETT.
Mr. PALMER with Mr. SULLOWAY.
Mr. PATTEN of New York with Mr. PLUMLEY.
Mr. RANSDELL of Louisiana with Mr. REYBURN.
Mr. ROBINSON with Mr. SIMMONS.
Mr. SCULLY with Mr. SMITH of California.
Mr. STACK with Mr. WARBURTON.
Mr. TAGGART with Mr. WOODS of Iowa.
Mr. TAYLOR of Alabama with Mr. SPEER.
Mr. WILSON of New York with Mr. SWITZER.
For the session:
Mr. FORNES with Mr. BRADLEY.
Mr. RIORDAN with Mr. ANDRUS.

Mr. TILSON. Mr. Speaker, I would like to ask if the gentleman from Mississippi, Mr. SISSON, is recorded as voting?

The SPEAKER. The gentleman is not recorded.

Mr. TILSON. I voted "no." I am paired with the gentleman from Mississippi, and I wish to withdraw my vote and answer "present."

The SPEAKER. Call the gentleman's name.

The name of Mr. TILSON was called, and he answered "Present."

Mr. SPARKMAN. Mr. Speaker, I would like to ask if Mr. DAVIDSON voted?

The SPEAKER. The gentleman is not recorded.

Mr. SPARKMAN. I voted "aye," Mr. Speaker, and I wish to withdraw my vote and answer "present," as I am paired with Mr. DAVIDSON.

The name of Mr. SPARKMAN was called, and he answered "Present."

Mr. MARTIN of South Dakota. Mr. Speaker, I voted "no." I have a general pair with the gentleman from Alabama, Mr. RICHARDSON, and I wish to withdraw my vote and answer "present."

The SPEAKER. Call the gentleman's name.

The name of Mr. MARTIN of South Dakota was called, and he answered "Present."

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the adoption of the resolution.

The question was taken, and the resolution was agreed to.

REGULATION OF INJUNCTIONS.

The SPEAKER. There are three hours of general debate, one half to be controlled by the gentleman from Texas [Mr. HENRY] and the other half by the gentleman from Illinois [Mr. STERLING].

Mr. HENRY of Texas. By the gentleman from Alabama [Mr. CLAYTON].

Mr. MANN. Mr. Speaker, there is nothing in the rule as to who shall control the time. It will have to be done by unanimous consent.

Mr. CLAYTON. Mr. Speaker, I ask unanimous consent that the time be controlled, one half by the chairman of the Committee on the Judiciary and the other half by the leading minority member on the same committee, Mr. STERLING.

The SPEAKER. The gentleman from Alabama asks unanimous consent that he control one half the time and the gentleman from Illinois [Mr. STERLING] control the other half. Is there objection? [After a pause.] The Chair hears none. The Clerk will report the bill.

The Clerk read as follows:

A bill (H. R. 23635) to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911.

Be it enacted, etc., That section 263 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, be, and the same is hereby, amended so as to read as follows, and that said act be further amended by inserting after section 266 thereof three new sections, to be numbered, respectively, 266a, 266b, and 266c, reading as follows:

"SEC. 263. That no injunction, whether interlocutory or permanent, in cases other than those described in section 266 of this title, shall be issued without previous notice and an opportunity to be heard on behalf of the parties to be enjoined, which notice, together with a copy of the bill of complaint or other pleading upon which the application for such injunction will be based, shall be served upon the parties sought to be enjoined a reasonable time in advance of such application. But if it shall appear to the satisfaction of the court or judge that immediate and irreparable injury is likely to ensue to the complainant, and that the giving of notice of the application or the delay incident thereto would probably permit the doing of the act sought to be restrained before notice could be served or hearing had thereon, the court or judge may, in his discretion, issue a temporary restraining order without notice. Every such order shall be indorsed with the date and hour of issuance, shall be forthwith entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed seven days, as the court or judge may fix, unless within the time so fixed the order is extended or renewed for a like period, after notice to those previously served, if any, and for good cause shown, and the reasons for such extension shall be entered of record.

"SEC. 266a. That no restraining order or interlocutory order of injunction shall issue except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

"SEC. 266b. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained; and shall be binding only upon the parties to the suit, their agents, servants, employees, and attorneys, or those in active concert with them, and who shall by personal service or otherwise have received actual notice of the same.

"SEC. 266c. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means so to do; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto."

Mr. STERLING. Mr. Speaker, I desire to offer the substitute at this time and have it read.

The SPEAKER. The Clerk will report the substitute.

The Clerk read as follows:

A bill (H. R. 21486) to regulate the granting of restraining orders and injunctions.

Be it enacted, etc., That no injunction, whether interlocutory or permanent, shall be issued by any Federal court or judge without previous notice and an opportunity to be heard on behalf of the parties to be enjoined; but if it shall appear to the satisfaction of the court or judge, from the evidence or showing made, that immediate and irreparable injury is likely to ensue to the complainant, and that the giving of notice of the application or the delay incident thereto would probably permit the doing of the act sought to be restrained before notice could be served or hearing had thereon, the court or judge may, in his discretion, issue a temporary restraining order without notice. Every such order shall be entered of record, and shall define the injury, state why it is irreparable and why granted without notice, and also shall have indorsed thereon the date and hour of its issuance. Every such order issued without notice and an opportunity by the defendant to be heard shall expire within such time after service is made or notice given, which shall be made or given as speedily as possible, not to exceed seven days, as the court or judge may fix, unless within the time so fixed the order is extended or renewed by the court or judge, for good cause shown, after previous notice and an opportunity to be heard.

The SPEAKER. The gentleman from Alabama [Mr. CLAYTON] is recognized.

[Mr. CLAYTON addressed the House. See Appendix.]

Mr. CLAYTON. Mr. Speaker, I ask unanimous consent that all gentlemen may have five legislative days in which to put in the RECORD remarks on the pending bill.

The SPEAKER. The gentleman from Alabama [Mr. CLAYTON] asks unanimous consent that all gentlemen shall have the

privilege of printing remarks on this bill for five legislative days. Is there objection? [After a pause.] The Chair hears none.

Mr. CLAYTON. How much time have I consumed, Mr. Speaker?

The SPEAKER. The gentleman has consumed 56 minutes. The gentleman from Illinois [Mr. STERLING] is recognized.

Mr. STERLING. Mr. Speaker, I yield 40 minutes to the gentleman from Pennsylvania [Mr. MOON].

Mr. MOON of Pennsylvania. Mr. Speaker, the vice of considering this important bill under a special rule which limits debate upon its merits to the short space of one hour and a half on each side has already been made apparent to this House. At the very outset of this argument the limitation of time imposed upon me makes it impossible for me to discuss adequately the great underlying fundamental legal principles which should be carefully weighed by the House before any vote is taken upon the bill.

Three distinct reasons have been urged by the proponents of this rule as a necessity for speedy legislation upon this bill. It has been boldly proclaimed by the advocates of the bill that the United States courts are the creatures of Congress; that Congress has by legislation called them into existence, and that Congress has therefore the power to modify, control, or destroy their functions and to place all of the limitations it pleases upon their judicial power.

It has also been further asserted that these courts have abused that judicial power, that under existing laws they have employed the writ of injunction as an instrument of oppression to certain classes of the people, and that this unwarranted usurpation by the courts has created a pressing necessity for this legislation.

One speaker who has preceded me has, indeed, boldly declared that the courts of the United States have violated the elemental principles of justice, have substituted the equitable power of the court for the criminal processes of the land, have punished crime through the medium of the writ of injunction, and have therefore deprived the citizens of the United States of the most sacred of all of our fundamental rights—the right of trial by jury.

Mr. Speaker, it had been my purpose in this argument to answer fully each of these assertions, to controvert absolutely each of these three propositions, but the limited time at my disposal and the necessity for an extended investigation of the provisions of the bill, make it possible for me to refer only briefly to these declarations.

No more serious and dangerous error has been advanced in modern times than the proposition that the judicial power of the United States courts is a creation of the Congress, that the functions and power of our courts have their origin in or derive their vitality from the legislative branch of the Government. The dangerous and pernicious doctrine of these modern times which finds its pretext in the demand for the recall of judges and the recall of judicial decisions has its origin in this error. Mr. Speaker, no man who is familiar with the Constitution of the United States and who is familiar with the historical facts that led to the adoption of that Constitution can for a moment doubt the error of that contention. The keystone of the arch of our constitutional government rests upon the absolute coordination and equality of its three great departments—the legislative, executive, and judicial. The wise builders of that Constitution, taught in the school of experience in the stormy days that preceded it, recognized the essential necessity for a complete separation between the judicial, executive, and legislative branches of the Government; and the superlative feature of that great instrument and that in which it differed essentially from any other government ever established was the placing of the judicial power of the courts equal to and coordinate with the legislative and executive powers, and that complete independence was accomplished by writing into the Constitution, in Article III, section 1, this declaration:

> The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish, etc.

The judicial power of our courts comes, therefore, from the Constitution of the United States and not from Congress. It derives its existence and its authority from the same source from which comes our legislative power. It is coordinate with and in all respects of equal potentiality to that power; and while the Constitution of the United States creates but one court and leaves to Congress the power to ordain such inferior courts as may be necessary for the operation of the Government, it is a fundamental principle of legal construction, established through a long line of judicial decisions and accepted as axiomatic, that these courts, when created and ordained, derive their judicial power from the Constitution and not from any act of Congress creating them. And therefore, Mr. Speaker, if it be found in the discussion of this bill that it seeks—as I am convinced it does—to strike down a part of the judicial powers of the courts vested by the Constitution, the legislation proposed by this bill is entirely beyond our power to enact.

But it is impossible, Mr. Speaker, for me to dwell longer upon this point, fundamental though it be, for I must proceed hastily to declare that the second proposition of the proponents of this measure is equally vicious and equally without reason, experience, or facts to sustain it. I refer to the assertion that the courts have abused their judicial power in the granting of injunctions; that they have made the injunctive processes of the courts an instrument of oppression for convicting men of crimes without the right of trial by jury, and have deprived them of their liberties without due process of law.

These assertions have been frequently made. They have been made the basis of political agitation, and have been industriously fomented to create a prejudice against our courts, but I stand here to assert their falsity and to declare to this House that they have never been established by evidence. I have been a member of the Judiciary Committee for six years. During that whole period of time bills seeking to deprive the courts of this power have been pending before that committee. Extensive hearings have been given to those favoring this legislation as well as to those opposing it. Frequent demands have been made by the committee of those making these assertions to produce the evidence before the committee to substantiate them. A few cases were presented, and an analysis of them utterly failed to establish the truth of the assertions. The fact is, Mr. Speaker, that the use of the injunction by the Federal courts is rarely resorted to. A careful examination of the records of the courts shows that from 1903 to 1912 only 25 injunctions were granted by the courts in labor cases, against 447 in other cases in which no complaint of any kind was ever made, and an analysis of the 25 cases in labor disputes demonstrates the fact that in every instance complete and impartial justice was done to both parties in the dispute. In the exceptional use of this great preventive writ, a writ absolutely essential to the administration of justice, mistakes may sometimes have been made, as they have been made and will be made in the future in every field of human instrumentality, but the declaration upon which the necessity for this drastic legislation is based is not true and therefore has not been proven.

It is true that a few men in the history of the Government have been punished by imprisonment for contempt of court for disobedience of the orders of the court in injunctive proceedings, and it is true that sometimes the acts complained of—acts which were employed in the violation of the injunction of the court—have been crimes, but no man familiar with judicial decisions and with the laws as administered by the courts would dare declare that the punishment for contempts for violation of the orders of the court have been made an instrumentality for the punishment of crimes. These crimes were a violation of State statutes, over which the Federal courts had no jurisdiction, and the fact that the violation of the order of the court for which the punishment for contempt was inflicted incidentally involved a crime against the State authorities is made the pretext for formulating these monstrous and false accusations against the courts of the United States. The whole argument to which I have referred is in effect an attempt to declare that the power of the court to protect the rights of the citizens of this country by the use of injunction should be denied and destroyed in certain classes of cases; that the efficacy of the courts to protect civil and property rights by the strong arm of equity should be curbed and restrained; and in this connection, Mr. Speaker, I desire to call the attention of the House to a statement made upon this subject by Justice Brewer of the Supreme Court of the United States in a public address made in Brooklyn in November, 1909:

> Government by injunction has been an object of easy denunciation. So far from restricting this power, there never was a time when its restricted and vigorous exercise was worth more to the Nation and for the best interests of all. As population becomes more dense, as business interests multiply and crowd each other, the restraining power of a court of equity is of far greater importance than the punishing power of a court of criminal law.
>
> The best scientific thought of the day is along the lines of prevention rather than those of cure. We aim to stay the spread of epidemics rather than permit them to run their course, and attend solely to the work of curing the sick. And shall it be said of the law, which claims to be the perfection of reason and to express the highest thought of the day, that it no longer aims to prevent the wrong, but limits its action to the matter of punishment?
>
> To take away the equitable power of restraining wrong is a step backward toward barbarism rather than forward toward a higher civilization. * * * Courts make mistakes in granting injunctions. So they do in other orders and decrees. Shall the judicial power be taken away because of their occasional mistakes? The argument would lead to the total abolition of the judicial function.

This is the publicly expressed opinion of one of the greatest and most conservative Supreme Court justices that has ever

adorned the bench. It is a brief but exhaustive summary of the efficacy and necessity of the writ of injunction, and completely answers all of the populistic declarations of interested parties that for political reasons are urging its destruction.

But, Mr. Speaker, I must pass from the consideration of these great questions and direct my attention entirely to the consideration of the bill before us. This bill is known as H. R. 23635 and was reported to the House on April 26, 1912, by a majority report made by Mr. CLAYTON, chairman of the committee, and a minority report in opposition to it representing practically the unanimous views of the minority, which was filed on May 3, 1912.

The bill itself seeks to accomplish two purposes. It first amends section 263 of the Judicial Code by substituting therefor the provisions of section 263 as provided in the pending bill. It then proceeds to amend section 266 of the Judicial Code by adding thereto sections 266a, 266b, and 266c.

The alleged scope of the bill is therefore to regulate the granting of injunctions. The power to grant injunctions is inherent in courts of equitable jurisdiction. The power is not possessed by all courts, but is an incident only of chancery jurisdiction and can be exercised only by courts clothed with that power or by legislative authorization. It is power possessed by the courts of the United States and is derived from the Constitution of the United States, which by section 2 of Article III provides:

The judicial power of the United States shall extend to all cases in law or in equity arising under the Constitution. * * *

This inherent power of the Federal courts to protect all of the citizens of the United States in the enjoyment of all of the rights secured to them by the Constitution is therefore not bestowed by Congress, but is derived from the same high source that Congress derives its power to exercise the function of legislation.

Injunction is and always has been an extraordinary remedy to protect constitutional rights from invasion; it is preventive rather than remedial, and it can only be employed by the courts or the judges when it is necessary to prevent irreparable injury and when the complainant has no adequate remedy at law.

These two conditions must exist before any judge will grant an injunction. Every lawyer before me knows that this is elementary textbook law and that it is embodied in our jurisdiction by an unbroken line of judicial decisions. But when these conditions do exist, and when they are made known to the court or a judge by a proper presentation of facts, then the Federal power conferred upon our Federal courts by the Constitution of the United States in equity clothes them with a fundamental, organic, and inalienable power of protection which it is not within the power of Congress to destroy.

Now, Mr. Speaker, after these general observations, I will proceed to a consideration of the bill before us, and I shall direct my attention first to the proposed substitution of section 263 of the bill for section 263 of the existing judicial code, and in doing this a few words of explanation respecting the origin of the proposed substituted section will be necessary. And this in turn requires a brief explanation of the history of congressional legislation upon the subject of injunctions.

The original judiciary act of 1789 made no specific provisions for the granting of injunctions, but by a general provision in that act power was given to the courts to permit special writs to meet special exigencies, and whatever injunctions were issued prior to that time were based upon this section of the judicial act; but on March 2, 1793, a specific act relating to injunctions was passed by Congress, which is as follows:

No injunction shall be granted in any case without reasonable previous notice to the adverse party or his attorney of the time and place of moving for the same.

This act continued in force until 1872, when the existing law upon that subject was passed. This act was carried into the recent judicial code of 1911 and now stands as section 263 of that code and is one of the sections that it is proposed to amend by the pending bill, or by the first section thereof. Mr. Speaker, from the earliest days of the Government down to 1872, notwithstanding the fact that the act of 1793 prohibited the granting of an injunction without notice to the adverse party or his attorney, restraining orders were constantly used by the courts without notice whenever the exigencies of the case required it. Following the earlier practice of the English courts, the distinction between restraining orders and injunctions was clearly recognized by the Federal courts. The statement of the majority of the committee in their report that the "will of Congress as thus expressed was completely thwarted and the statute nullified by the peculiar construction placed upon it by the courts" is wholly without foundation in fact. This clearly recognized distinctive and necessary discrimination was acquiesced in by the entire bar of the country, and one of the earliest cases arising under the act of 1793 arose in my own city of Philadelphia before a court presided over by Justice Wilson of the Supreme Court, who had himself been one of the most active and influential men in the framing of the Constitution; and it is a curious historical fact that the case was heard in a room in the old statehouse adjoining that in which the Constitution of the United States had but a few years before been adopted. The case is the one reported in 2 Dallas, page 360, Schermerhorn *v.* L'Espenasse, in which a restraining order was issued to prevent the defendant from transferring a very large amount of the certificates of the bonded indebtedness of the United States, or receiving the principal or interest thereon, in violation of an agreement transferring the right to the same to the plaintiff Schermerhorn. In this early case, as I have before stated, the restraining order was issued without notice and was acquiesced in by Mr. Lewis, attorney for the defendant, then one of the leading lawyers in the country, who stated to the court that he understood that in this case and in a large number of other cases, an injunction must be issued before a subpœna was served, as there were various cases in which justice could not otherwise be obtained.

This practice, Mr. Speaker, of issuing restraining orders without notice, I repeat, was continued from the time of the passage of the act of 1793 down to the present time. Even Chief Justice Marshall, while sitting in circuit, granted such orders to prevent irreparable mischief where there was no adequate remedy at law; and it was universally recognized by the courts and by the bar that whenever a case was presented to a chancellor, where the plaintiff was without adequate protection of law, and where the injury sought to be restrained was irreparable, and where the giving of notice to the defendant to make the application might of itself be productive of the mischief apprehended by inducing the defendant to accelerate the act in order that it might be complete before the time for making the application had arrived, the chancellor must of necessity stretch forth the strong right arm of equity to prevent the mischief; and that that power was inherent and organic and derived from the Constitution of the United States which vested the courts with equitable power and was beyond the power of Congress to deny or defeat.

Mr. Speaker, I repeat that such was the state of the law until 1872, when the present law, known as the Carpenter Act, was passed, which repealed the act of 1793 and became thereafter the Federal law upon the subject of injunctions. This law is also very brief.

SEC. 718 (now section 263 of the Revised Judicial Code). Whenever notice is given of a motion for an injunction out of a circuit or district court, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion, and such order may be granted with or without security, in the discretion of the court or judge.

It will be observed that a rigid interpretation of the language of section 718 would require that the granting of a restraining order by the courts must be preceded by a notice to the defendant of the granting of a writ of injunction. This was not the intention of the legislators, nor was that construction ever placed upon it by the courts. At the time of the passage of this act in the Senate in 1872 the author of the bill, Mr. Carpenter, publicly declared in his argument that his understanding of the powers of the courts to issue restraining orders in special cases could not be controlled by Congress, and this statement was acquiesced in by those who opposed the bill; and I repeat, Mr. Speaker, that in all decisions rendered by the courts since that time down to the present the inherent right of the court to grant a restraining order without notice to prevent irreparable mischief, when the exigencies of the case require it, was never denied nor disputed by the bar or bench of the country, and the courts continued to exercise this power to grant restraining orders without notice in a few cases where it was absolutely essential to protect civil and property rights.

But, Mr. Speaker, in recent years certain agitators attempted to foment public discontent among the masses by charging the courts with a violation of the strict letter of the law. The agitation and the declarations of these promoters were entirely unjustifiable, but the allegations were widely disseminated and resulted in occasional resentful denunciations of judges and courts of what was alleged to be an unwarranted abuse of judicial power.

President Taft, in his message to Congress of December, 1909, made the following recommendation:

I recommend that in compliance with the promise thus made—

referring to the platform of the Republican convention of 1908—

appropriate legislation be adopted. The ends of justice will best be met and the chief cause of complaint against ill-considered injunctions without notice will be removed by the enactment of a statute forbidding hereafter the issuing of any injunction or restraining order, whether temporary or permanent, by any Federal court without previous notice

and a reasonable opportunity to be heard on behalf of the parties to be enjoined; unless it shall appear to the satisfaction of the court that the delay necessary to give such notice and hearing would result in irreparable injury to the complainant, and unless, also, the court shall from the evidence make a written finding, which shall be spread upon the court minutes, that immediate and irreparable injury is likely to ensue to the complainant, and shall define the injury, state why it is irreparable, and shall also indorse on the order issued the date and the hour of the issuance of the order. Moreover, every such injunction or restraining order issued without previous notice and opportunity by the defendant to be heard should by force of the statute expire and be of no effect after seven days from the issuance thereof or within any time less than that period which the court may fix, unless within such seven days or such less period the injunction or order is extended or renewed after previous notice and opportunity to be heard.

My judgment is that the passage of such an act, which really embodies the best practice in equity, and is very likely the rule now in force in some courts, will prevent the issuing of ill-advised orders of injunction without notice and will render such orders, when issued, much less objectionable by the short time in which they may remain effective.

After the receipt of this message, as I was at that time engaged on the subject of the revision of the judicial title of the Federal statutes, I took the matter up forthwith and prepared a bill which I submitted to the President, and he gave it his hearty and unqualified approval. This bill was widely published throughout the country with the President's statement that he approved fully of all of its provisions and that he hoped it would be passed by Congress without any alteration, amendment, or change whatever. This bill was introduced in the Sixty-first Congress, was referred to the Judiciary Committee, but has never been reported therefrom.

This bill was again introduced in the present Congress, and was proposed in committee as a substitute for the pending bill, and under the provisions of the rule under which this present discussion is proceeding, will be offered to the House by the Republican Members as a substitute for the same.

This bill, then, introduced by a Republican Member and indorsed by President Taft, represents, I believe, the attitude of our party upon the subject of congressional regulation of injunctions.

It is substantially section 263 of the proposed bill with one single exception, to which I shall allude hereafter. It does not in any material respect change the existing law with regard to injunctions. It merely clothes the court with the legal right to issue restraining orders, without notice, without resorting to the exercise of its inherent equitable powers to do so. It defines the requisites that must appear to the court as a ground for issuing the restraining order without notice. It requires the day of the issuance of the order to be indorsed upon it and requires the reason for its being granted without notice to be spread at large upon the record. It requires by law the complainant to be reasonably vigilant in maintaining his right to the remedy he has invoked. In other words, it embodies in concrete legal form the actual practice of the judges of the Federal courts, almost invariably pursued by them, in the granting of injunctions, and does eliminate the danger of all ill-considered and injudicious restraints, and erects an impregnable bulwark against the widely disseminated, resentful, but unwarranted, denunciations of the courts and judges.

Mr. Speaker, I repeat that this is, I believe, the attitude of the Republican Party upon this subject; a willingness that they have at all times shown to assent to any rational proposal to properly safeguard the issuance of injunctions against even the possibility of abuse. I repeat, in order that it may be distinctly understood, that this proposal is indorsed by the Democratic members of this committee by their proposal in this bill to amend section 263 by this literal transcript of the Moon bill, with the exception before alluded to.

The minority members therefore practically support this section, as before stated, and will, at the proper time, move to substitute that section, slightly amended, for the proposed bill and will ask the House to join them in that proposition.

Now, the only material difference between the Moon bill and section 263 of the pending bill, to which I desire now to call your special attention, is that the Moon bill provides that the restraining order issued without notice shall expire seven days after it is served upon the defendants. Section 263 provides that it shall expire not more than seven days after it is entered. That is the vital distinction, and it is vital.

Why, a restraining order is of no vitality until it is served; it is as inocuous as the paper on which it is written. It has no force, it is not in existence as far as it has any effect, as long as it is in the pocket of the officer or in the archives of the court. It is a harmless and inocuous paper itself. Its vitality only comes into existence the moment it is served, and if you are going to make a restraining order expire seven days after the entry, the way to let an order expire is to evade the service and get outside the jurisdiction of the court. Therefore, when any person has an idea that a restraining order is to be issued he may get out of the way and thus evade it. That is the vital distinction between the two.

They point out the fact that the President recommended that it should expire seven days after entry. They point out the fact that the Clayton bill itself embodied the recommendation of the President. I shall not attempt to state conversation between myself and the President, but I prepared this bill containing this vital distinction. It was submitted to the President. He examined it carefully and gave out to the country the statement that he approved every word of that bill and hoped that it would forthwith be passed by Congress.

Therefore the inference is irresistible that in that particular point, when the President's attention was called to it, he approved without qualification this change from his original recommendation.

Now, Mr. Speaker, I resume my discussion of the other section of this bill. This section is defective only in the respect of which I have spoken, and all that needs to be corrected is in that one essential particular, and then it would be good law. I want to repeat before I leave it, that this provision introduces nothing new in the law, but simply embodies in a statutory form the exact practice of all the Federal judges in granting injunctions.

I now pass to a consideration of the other sections of this bill, and desire to call the attention of the House to the fact that they are designed as amendments to a different section of the judicial code. They propose three additional sections to be added to section 266 of that code. They are numbered in order as section 266a, section 266b, and section 266c, and they are intended as new substantive provisions of law. What is section 266? It is not the general law relating to injunctions. Two hundred and sixty-six is what is known as the Overman bill. When we passed the Interstate Commerce Act, which, among other things, provided for the Commerce Court, there was great agitation about the Federal courts restraining the operation of a State law. There was an effort made to absolutely prohibit the Federal courts from prohibiting the operations of a State law. That was discovered to be absolutely unconstitutional. Under the fourteenth amendment, the States were absolutely prohibited from depriving people of the equal protection of the law, and therefore whenever a State statute did that the United States courts must perforce have jurisdiction and restrain it. What did we do? We said by section 266 that whenever the application was made to the Federal courts to restrain the operations of a State law one judge could not grant an injunction, that there must be three judges sitting and one of them must be either a supreme court justice or a circuit court judge. That is the law to-day, that is all. It is a regulation of injunctive power that is within the power of Congress. Now, this bill seeks to add three new sections to that. One of them, section 266a, which at length says that no restraining order shall issue except upon the giving of security. Well, I have not any objection to that. I want to say that is nothing but an unnecessary reflection upon the fairness of the chancellors of the United States. No single instance to establish its necessity ever was even hinted at before the committee. I have never heard a statement in all this agitation that any court has failed to perform its duty in that respect. The act of 1872, now section 263, gives discretion to do or not to do it. No living man ever made a statement before our committee or anywhere else that the court had not always required security when it was necessary; therefore this section is an unnecessary reflection against the judges; but it is all right; I do not object to it.

The next one is 266b, and let me call attention to that for a few minutes. It says:

That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained.

And it also further provides, and this is to me the dangerous part of it:

And shall be binding only upon the parties to the suit, their agents, servants, employees, and attorneys or those in active concert with them, and who shall by personal service or otherwise have received actual notice of the same.

First of all, the issuance of injunction and the requisites of an injunction are essentially regulated by the equity rules of the United States courts. It has been said, indeed, in the majority report, that there is *no law* to-day requiring any particular form for an injunction. Our equity practice for nearly 60 years has been regulated by enacting a few fundamental principles and then leaving all the details of the practice to the rules of the Supreme Court of the United States. These rules and regulations have, therefore, the authority of law. Every lawyer here who practices in a supreme court knows that. The Supreme Court rules prescribe the essentials

of an injunction. No judge draws an injunctive order to suit his own will or his own caprice. Therefore every single order is regulated by law to-day. Now, I call attention of the majority side of this House to the fact that these rules forbid in an injunctive order unnecessary recitals. The object of every injunctive order is to make clear what the parties restrained have to do or what they must not do. Any injunctive order that does not do that so clear that the wayfaring man, though a fool, could not err therein, can not be held and never has been held to be properly drawn or to be of any legal force or effect, but these rules do say that a man shall not restate in that order the recitals of the bill; that you must state what the man must or must not do. Why, you confuse any man by making a restraining order if you do not do that. The existing practice absolutely requires that everything shall not go in. Now, bear in mind the uselessness of this provision. The first section already provides—that is one of the things provided in section 263; one of the things recommended by the President—that the judge when he grants the restraining order without notice should write in the record the kind of injury he was going to guard against and say why it was irreparable and why he granted it without notice. That is already provided for to be entered in the record of the court. Now, why provide for a useless repetition in the injunctive order of the court when it can only confuse the person sought to be restrained? Now I propose to pass very briefly upon the next paragraph of this section, as there are other gentlemen who will speak about it. I refer to the paragraph which limits the persons to be bound by the injunction. The gentleman from Illinois, in his query to the chairman of the committee, indicated by his question what everybody here has in mind—that the object of this bill plainly is intended to limit the scope of the injunction to somebody named in it or somebody known to the complainant at the time it is issued; somebody who at some time happens to be in active concert with them. But, Mr. Speaker, the intention of the injunction is to restrain an irreparable injury, to restrain an injury that can not be compensated for by law, to restrain every person under all conditions and under all circumstances that can be reached by a court of equity from doing the thing prohibited. Now, under the attempt to limit it by this legislation to known persons, or to persons in active concert with them, you are going to minimize, to narrow, and, in some instances, to destroy that power.

Mr. SHERLEY. Will the gentleman yield for a question?

Mr. MOON of Pennsylvania. I do.

Mr. SHERLEY. Will the gentleman permit me to say that I have in my hand the rules of practice in equity. Will the gentleman point out the rule which he says controls the practice in the issuance of injunctions by courts?

Mr. MOON of Pennsylvania. I can not do so, my time is limited and I can not be interrupted to do that.

Mr. SHERLEY. Can the gentleman even state the number of the rule?

Mr. MOON of Pennsylvania. No; I can not do that. But I am absolutely convinced of the fact that it is provided for in the rules of the court. The gentleman knows it as well as I do.

Mr. SHERLEY. I deny absolutely the statement the gentleman has made, and for that reason offer him the rules, so that he can present the rule he refers to to this House.

Mr. MOON of Pennsylvania. The rules do not say what an injunction shall——

Mr. SHERLEY. That does not answer the question that the rules of the Supreme Court declare exactly what an injunction shall contain.

Mr. MOON of Pennsylvania. They do so essentially but not in detail; but to return to the subject that I was discussing at the time of the interruption, I was endeavoring to show that there are many conditions under which men who are not parties, who are not agents, who are not in active concert with defendant, might, even with the notice of the restraining order, commit every act of irreparable mischief that order sought to prevent. Now, the only excuse for this provision is this. The only consequence inflicted upon a man who disobeys a mandate of a court in equity is punishment by contempt. Of course everybody recognizes that. Many men in times of excitement would not hesitate for a moment to openly, flagrantly, or defiantly violate court injunction but for the fear of that punishment. Now, the invariable rule, established by the Supreme Court, a rule of invariable application, is that no man can be punished for contempt for the violation of an injunctive order, who did not have a real, substantial, or accurate notice of the existence of that order and of the fact that he was purposely violating it. Therefore your effort to limit it to an enumerated number of people is exceedingly dangerous, and would permit the commission of many offenses by men who could not be named, and who could not be shown to be in active concert with those who are named, and is absolutely unnecessary, because the court can not punish them for contempt until they have actual notice.

Now, Mr. Speaker, the next section is the one to which I desire to call the particular attention of the House, namely, section 266c, which is as follows. If you gentlemen have not the bill before you, I beg to ask you to consider it carefully while I hastily read the section. Here we come to the real meat in this bill, here we come to its sinister motives, here we come to the introduction of a danger that requires and demands our most careful scrutiny.

SEC. 266c. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law.

Now, that seems absolutely harmless. You would say, on the face of it, "Mr. MOON, that is existing law." I say, if it is existing law, why do we want to do the futile and foolish thing of exposing ourselves to the ridicule of the courts by enacting existing law? Everybody will say, "Why, an injunction can not issue in any case except where there is no adequate remedy at law." That is true. An injunction can not issue in any case except to prevent an irreparable injury. That is true. I have textbook authorities here, which I will not take time to read. Every tyro and student of law in his first year knows that. He knows when you talk about an injunction its authorization requires two absolutely essential prerequisites, the first one of which is that there must be no adequate remedy at law, and, secondly, that the mischief must be irreparable. In other words, the injunction does not come into existence until ordinary legal means have become useless for protection. Why, the intervention of equitable protection is wholly dependent on the fact that a man has no adequate remedy at law. Now, therefore, you say and I say, why is it necessary to declare that in labor disputes a complaint shall not be entitled to a writ of injunction except to prevent irreparable mischief and when there is no adequate remedy at law, when that is already the law now in every case?

Ah, Mr. Speaker, the sinister object of that is found in another clause. It is found in the definition of the rights that are to be the subject of injunctive protection; you will find that in this particular class of cases—labor cases—that the injunction shall issue only to protect property and property rights. I want to pause there to make it clear. Every other right known to the law—civil rights, personal rights, political rights—will be absolutely beyond the power of protective relief in labor disputes. Now, understand that the definition given of injunctions by every standard authority—and I have them here and will put them in the RECORD, but will not take time to read them now, but nobody will contradict them—the definition given of the rights that the injunctive process is intended to protect are civil and property rights. This bill contains the sinister limitation in this particular class of cases of the protection of the injunctive process to property and property rights only.

Now, let me make that clear. Do not, gentlemen, get into your minds and say, "Oh, well, it only takes away the power to protect by injunction these civil, personal, or political rights. It leaves for them all the protection of the common law and the common-law courts. It simply strikes down the power to protect by injunction these great rights." Nothing of the kind. Do not be deceived. Understand that no injunction can issue in any case as long as there is legal protection for any rights; no injunction can issue as long as the damages to those rights are susceptible of calculation. No injunction can issue in these cases or in any cases until the protection afforded by the common law has broken down and is inapplicable. Therefore this limitation to property rights does not begin until there is no other protection left except the equitable protection. That is, in other words, by striking down equitable protection in labor disputes to civil rights and personal rights and political rights you take away all the protection they have under the Constitution.

Let me restate it. They could not come into equity at all until they had not any adequate remedy at law. They can not get into equity until their damages are irreparable. That is hornbook law. Therefore, for the protection of all rights except property rights in a labor dispute, every power under the Constitution and the law is absolutely swept away, except the power to punish for crime.

Mr. Speaker, the result is obvious. If you pass this bill, you denude the citizens of the United States of every vestige of

protection under the Constitution and laws of the land as soon as their rights are involved by a labor dispute, except as to the protection of property rights. Suppose some of your constituents desire to go into industrial pursuits. They buy a piece of land to build a factory, and in so doing they are protected by the Constitution and the law and the equity power of the courts in all the rights that they possess as to property, civil, personal, and political. They buy bricks to build that factory, and they buy the machinery to put into it, and in all of these transactions they do not denude themselves of legal or equitable protection at all. The full power of the Constitution and the laws of the land are open to them in a court of equity for protection. But the moment they employ labor to operate that industry, under this bill, that very moment they denude themselves of the protection of the Constitution of the United States, and the laws passed in pursuance thereof, to everything except their property rights.

Gentlemen, I am going to stop to tell you that that is absolutely unconstitutional. You can not do it. Would you do it if you could? You are going to create a class here that has greater rights or less rights under the law than the rest of the people. The class thus attempted to be exempted from the operation of the general law is the labor class and all other persons involved in labor contracts. Do you realize the extent to which contracts growing out of labor affect our life? Why, it was stated before our committee that there are 30,000,000 people in this country engaged in gainful occupations. It seemed to me like an overstatement, but the witness declared his ability to verify it. Why, gentlemen, our material greatness, our stupendous importance in the eyes of the world, and our national leadership in commerce and finance have been gained by our prominence as an industrial nation, and it is safe to say that three-fourths of our vast population have many diverse interests that are affected in vital ways by labor contracts or by questions affecting labor relations; and in this industrial Nation is it wise to say that three-fourths of our people shall be deprived of protection except for property rights?

Even though you should regard it wise, you can not do it, because it is unconstitutional. One of the primal objects of that Constitution was to secure to all men at all times the equal protection of the law, to prevent the creation of class distinctions. This has been so frequently declared by the courts that citation of authority is unnecessary, but let me read you what Justice Field said about the equal protection of the laws, this constitutional guaranty secured to all of the people. Let me tell you what he said about what every law must do and what all are entitled to.

In the case of County of Santa Clara *v.* Railroad Co., in Eighteenth Federal Reporter, speaking of this subject, he said:

> And by equal protection is meant equal security to everyone to his private rights—in his right to life, to liberty, to property, and to the pursuit of happiness. It implies not only that the means which the laws afford for such security shall be equally accessible to him, but that no one shall be subject to any greater burdens or charges than such as are imposed upon all others under like circumstances. This protection attends everyone everywhere, whatever be his position in society or his association with others, either for profit, improvement, or pleasure. It does not leave him because of any social or official position which he may hold, nor because he may belong to a political body or to a religious society or be a member of a commercial, manufacturing, or transportation company. It is the shield which the arm of our blessed Government holds at all times over everyone—man, woman, and child—in all of its broad domain, wherever they may go or in whatever relations they may be placed.

That is the idea of the equal protection of the law that is evidenced by a great justice of the Supreme Court of the United States.

Why, Mr. Speaker, every act that has ever been attempted to be passed by a State to deprive the people of the equal protection of laws has been declared unconstitutional. I recall one in the State of Illinois—a leading case upon the subject, reported in 184 United States, page 540—entitled Connelly *v.* The Union Sewer Pipe Co.

The State of Illinois had passed one of the most sweeping antitrust acts ever passed by any State. It not only attempted to prevent combinations which sought to restrict prices, and not only made such a combination a criminal act, but it provided, further, that no suit at law to recover for the price of goods manufactured and sold in violation of the statute could be maintained. The defendants refused to pay for pipe that had been bought, on the ground that they were manufactured and sold in violation of the provision of this act. Section 9 of the act was as follows:

> The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer and raiser.

The Supreme Court of the United States, in a vigorous opinion delivered by Justice Harlan, declared the act unconstitutional because it denied to persons within the jurisdiction of the court the equal protection of the laws, in violation of the fourteenth amendment. The language of the court upon this subject is as follows:

> The fourteenth amendment, in declaring that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others.

The similarity, Mr. Speaker, between the proposed provision of the pending bill, destroying equitable protection for essential rights to a large and distinctive class of our citizens and the Illinois antitrust act, which exempted from its provision certain classes of contracts, must be obvious and apparent to all, and the language of Justice Harlan declaring that act unconstitutional is in every essential principle equally applicable to the act we are asked to pass by the adoption of the present bill.

It is true that the cases which I have cited arose under the fourteenth amendment to the Constitution, which is a prohibition upon the States to enact legislation depriving the citizens of the States of the equal protection of the law; but it is universally conceded by all lawyers and men familiar with the trend of judicial decisions that the prohibition of the fifth amendment to the Constitution, which is a limitation upon the power of Congress to pass any act which shall deprive the citizens of the United States of life, liberty, and property without due process of law, is the exact equivalent of the fourteenth amendment; that, in other words, Congress has no greater constitutional right to deprive the citizens of the United States of the equal protection of the laws of the land under the salutary provisions of the fifth amendment to the Constitution than have the respective States the right to deny the same equal protection of the law to their own citizens under the provisions of the fourteenth amendment. While this particular point has never yet come before the Supreme Court for final decision, because Congress has never heretofore attempted to deprive our citizens of that equal protection, yet it has been established by analogy and will not be doubted or disputed by any lawyer upon the floor of this House.

Mr. CLAYTON. Mr. Speaker, may I interrupt the gentleman to ask him what case he is referring to?

Mr. MOON of Pennsylvania. From Connelly *v.* The Union Sewer Pipe Co., One hundred and eighty-four United States Reports.

Mr. CLAYTON. I thought he was reading from the well-known foundry case. I thought the gentleman was in search of the truth and I thought I saw evidence of the light of truth breaking in on him [laughter], and I wanted to give him the whole light.

Mr. MOON of Pennsylvania. I have read to the gentleman from the opinions of the Supreme Court, to which I go for all interpretation of principles, and in the light of which I stand, and which I think will utterly and absolutely condemn the spirit of this bill.

Mr. CLAYTON. That is a very great undertaking in this Congress.

Mr. MOON of Pennsylvania. I am willing to assume that obligation, but I would not have proposed it if the gentleman had not interrupted me.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. STERLING. Mr. Speaker, I yield 15 minutes more to the gentleman from Pennsylvania.

The SPEAKER pro tempore. The time of the gentleman from Pennsylvania [Mr. MOON] is extended 15 minutes.

Mr. MOON of Pennsylvania. Mr. Speaker, again I am reminded of the limitation of my time, and I must hurriedly pass to the last section of the bill. Gentlemen, the first paragraph of section 266c is vicious, dangerous, and unconstitutional, as I have shown you, but the next is worse, if possible. Let me call your attention now to the second paragraph of that section. It is as follows:

> And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or

to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means so to do; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto.

This hurried analysis I have given of the first paragraph of section 266c has, I trust, aroused your fears to the danger of such legislation and to its apparent unconstitutionality. But some of the more optimistic of you may say, "Well, at all events, even though we are denied the equal protection of the law, and even though we are denied the protection to our civil, political, and personal rights by that section, yet, thank God, we have our property rights protected." Oh, no, gentlemen, do not delude yourselves with any such false hope. Read this next paragraph and you will find that in a great multitude of important cases, when the citizens of the United States are in vital need of equitable protection, the courts are absolutely deprived of their power to protect even property rights. It says that in the protection of property rights certain enumerated acts shall never be enjoined. Do you catch the significance of that? I ask you to observe that those acts thus protected are every one of them successive steps in every strike, every boycott, every lockout that has ever been devised. They separate those acts and segregate them and place them separately beyond the power of the court to enjoin for any purpose; they enumerate a number which no court would ever think of enjoining independently, but they give each, step by step, until they enumerate in their successive order every single implement that has been employed by the cruelest, most tyrannical, most brutal, and most dangerous strikes and boycotts that human ingenuity has ever invented.

In other words, Mr. Speaker, the first paragraph of section 266c strikes down the power of our courts to protect in labor disputes any rights but the rights of property, and the second paragraph of that section, the paragraph we are now considering, strikes down absolutely the power of the courts to protect even property rights, when that protection requires them to restrain by injunction the performance of certain enumerated acts by men engaged in labor disputes, acts many of which are innocent in themselves and which no court would even independently enjoin, but which in combination have been and may at any time again become the most dangerous and destructive weapons of unlawful industrial warfare.

Permit me again, Mr. Speaker, to call the attention of the House to the fact that while this section only professes to deprive us of the right of equitable protection by injunction to all of our rights in labor disputes, yet to deprive us of this protection is to deprive us of all protection guaranteed by the Constitution, because the right to equitable protection does not begin until the power of the law to protect us is inadequate and impossible.

The obvious purpose of this paragraph, Mr. Speaker, is to legalize the modern strike and secondary boycott as instruments of industrial warfare, and to place the destructive machinery of these dangerous and cunningly devised weapons beyond the preventive power of our courts of justice.

Mr. Speaker, the right of men singly or in combination to strike for the purpose of increasing their wages, for bettering their condition, or for any other legal purpose; the right of men to refuse for any reason to work for another or to deal with him in any way, is one of the highest and most sacred rights known to the law. It is a right that is at all times entitled to the absolute protection of courts of justice, and no court and no judge in the land would withhold that protection. It has been declared by the Supreme Court of the United States to be a personal and a property right guaranteed by the Constitution of the United States.

But, Mr. Speaker, every man acquainted with modern labor disputes knows that many organized strikes are not limited in their purpose or their conduct to a securing of those rights.

Mr. Speaker, the strike as an instrument in labor disputes assumes in its progress innumerable forms, but certain features are common to all of them. Various attempts have been made to define them. Some eminent authorities have gone so far as to say that a peaceful strike has never been conducted, that it is impossible, that in its very nature it aims at unlawful coercion of employees and of men seeking employment. A very fair and conservative analysis of the ordinary features of a strike is contained in the following statement gleaned from Federal decisions:

> A strike is properly defined as a simultaneous cessation of work on the part of the workmen, and its legality or illegality much depends upon the means by which it is enforced and on its objects. It may be criminal or it may be part of a combination for the purpose of injuring or molesting either masters or men; or it may be simply illegal, as if it be the result of an agreement depriving those engaged in it of their liberty of action; or it may be perfectly innocent, as if it be the result of the voluntary combination of the men for the purpose only of benefiting themselves by raising their wages, or for other lawful purposes.
>
> In every case the questions involved are—is it an innocent strike or is it a combination designed to cripple the employer's property, to obstruct him in the operation of his business, to interfere with other employees who do not wish to quit, or to prevent by intimidation or other wrongful modes or by any device the employment of others to take the place of those quitting, and not such as were the result of the exercise by employees in peaceable ways of rights clearly belonging to them and not designed to injure or embarrass others or to interfere with the actual possession and management of the property of the employer.
>
> Any combination to interfere with the perfect freedom in the proper management of one's lawful business, to dictate the terms upon which such business shall be conducted by means of interference with property or with the lawful employment of others, are necessarily within the condemnation of the law.

It will be observed that while recognizing the existence of lawful striking combinations and clearly defining their entire legality for certain purposes, the court in these cases denounces as unlawful a combination designed to cripple the employer's property, to obstruct him in the operation of his business, to interfere with other employees who do not wish to quit, or to prevent by intimidation or other unlawful modes or by any device the employment of others to take the places of those quitting, or to interfere with the perfect freedom in the proper management of one's lawful business, and so forth.

These things, Mr. Speaker, are unlawful; they are beyond the protection of the ordinary processes of the law; they result in irreparable injury to property and property rights; they invade the personal and civil rights of many men; and they must be protected by a court of equity by the use of the injunction. Can any man for one moment seriously doubt that the acts enumerated in this section—acts intended hereby to be made absolutely immune from equitable protection or prevention—are acts intended to accomplish one or all of these illegal or inequitable objects? They are the very acts that have always been employed for this purpose; they are the successive steps of an illegal combination for an illegal purpose, and to simply label them as peaceful does not change their character or their effect. They are the elemental factors in every common-law conspiracy in labor disputes, and their organization and consummation creates in the most absolute sense a conspiracy in restraint of trade.

But, Mr. Speaker, my limited times does not permit me to give detailed illustrations of the dangerous and illegal acts that would be protected by the immunity from equitable relief guaranteed to a special class of our citizens by this paragraph. It would not only have prevented the courts in the past from preventing by injunction dangerous and destructive strikes that have menaced the peace and prosperity of our country, but would completely disarm them of all power to prevent the secondary boycott, which is conceded by all persons familiar with the subject to be the most brutal, despotic, and destructive power ever conceived by the ingenuity of man—an engine of oppression so dangerous that to strike down the power of the court to prevent it is the most dangerous limitation of power that it is possible to conceive.

For these reasons, Mr. Speaker, the provisions of this paragraph are dangerous and void. If passed by this House, and if it should become a law, I confidently venture the prediction that the trial courts of the land will be obliged to disregard it when it is attempted to be used as an instrument to inflict irreparable injury, and that the Supreme Court of the United States will declare it a usurpation of power by Congress.

But, Mr. Speaker, it is open to other fatal objections. Like the previous sections, it denies the equal protection of the laws; it is in the interest of certain classes, and, in addition to this, it is unconstitutional and impossible because it makes the protection of rights depend upon the character of the controversy and upon the sanctity of certain acts of the persons concerned therein and not upon the character and quality of the rights involved. In this respect it is a novelty in legislative history. Constitutions are created to protect human rights. Legislatures are organized to pass acts commending that which is right and prohibiting that which is wrong. The office of constitutional governments, therefore, and the functions of legislative bodies are to secure rights and to prevent and punish wrongs; and to accomplish these purposes every human instrumentality that interferes with the enjoyment of rights or the prevention of wrongs is of necessity placed under the ban of the law without regard to its individual quality or to its apparently inocuous character.

Mr. Justice Holmes has declared in the case of Aiken *v.* Wisconsin (195 U. S., 194) that—

> No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law.

This paragraph boldly attempts to accomplish that purpose; to sanctify and place beyond the reach of the law certain specified acts of certain individuals, independent of any consideration of the plot or scheme of which these protected acts may be made a part. No matter if these acts, even though innocent in themselves, may become the successive steps in the destruction of the rights of the citizens of the United States, or may be made effective means in the infliction of dangerous and irreparable wrongs, they are attempted to be placed by this bill beyond the reach of judicial control, and therefore beyond the power of the Government to correct or to prevent. The legislative arm of the Government, therefore, deriving its sole power from the Constitution, could destroy by an act of Congress the very function which the Government was instituted to perform, namely, the protection of rights and the prevention and punishment of wrongs.

Why, Mr. Speaker, a great religious poet has heralded the millennium as the time when universal peace shall reign upon the earth, and has symbolized it by the beautiful figure of turning the sword into a plowshare and the spear into a pruning hook. The plowshare and the pruning hook have therefore, from time immemorial, become the symbols of peace, prosperity, and good will. They have been hallowed in song and in story as typical implements of the people of the ideal future. They are regarded everywhere to-day as the most harmless and peaceful implements of the most noble and honorable occupation known to man; but what would you think of an attempt to pass a law by Congress declaring that henceforth no act of any man if committed by a plowshare or a pruning hook should be prohibited or punished, and that these peculiarly sacred instruments should be placed absolutely beyond the regulative power of the law.

Such, Mr. Speaker, is the purpose of paragraph 2 of section 266c of this bill, and since the time allotted to me has about expired I shall close my argument by demonstrating to this House that this very proposal has been declared beyond the power of Congress by one of the most recent cases upon a kindred subject that has received the attention of the Supreme Court. I refer to the case of Gompers *v.* The Buck Stove & Range Co., reported in Two hundred and twenty-first United States, page 418, which was decided by the Supreme Court only a few months ago.

In that case the court had issued an injunction restraining the defendants from boycotting the complainant or from publishing or otherwise making any statement that the Buck Stove & Range Co. was or had been on the "unfair" or "We don't patronize" list of the defendants.

The complainants contended that the injunction had been violated; that the speeches, editorials, and publications made by the several defendants at different times were intended to continue the boycott and to republish the fact that the complainant was on the unfair list. The defendant contended that the injunction was unlawful, because it was not within the power of the court to abridge the liberty of speech or the freedom of the press.

The court, in commenting upon this, said:

But if the contention be sound that no court can under any circumstances enjoin a boycott if spoken words or printed matter were used as one of the instrumentalities by which it was made effective, then it could not do so even if interstate commerce was restrained by means of a blacklist or printed device to accomplish its purpose. And this, too, notwithstanding that the law provides that where such commerce is unlawfully restrained, it shall be the duty of the Attorney General to institute proceedings in equity to prevent and enjoin the violation of the statute.

The court then added:

The court's protective and restraining powers extend to every device whereby property is irremediably damaged or commerce is illegally restrained. To hold that the restraint of trade under the Sherman Antitrust Act or the general principles of law, could be enjoined, but the means through which the restraint was accomplished could not be enjoined, would be to render the law impotent.

If the right of free speech and the freedom of the press, which have special guaranties and immunities under many State constitutions, can not be protected as a device or instrumentality to inflict injury upon the citizens of the country, how much less can the acts enumerated in this paragraph be placed beyond the law when they are attempted to be used for that purpose?

But, Mr. Speaker, I must close. I have attempted hastily to point out to you the features of this bill. I have referred at some length to what I regard its most dangerous provisions, and I will leave the matter with the House with the statement that no matter how many men be swayed from their loyalty to the Constitution and from their reverence and respect for the courts by popular demagogues or by newly invented devices for obtaining expressions of the popular will, I shall stand in opposition to any measure, coming from any source or indorsed by any party, that aims at the weakening of the power of our courts to protect to the utmost the right to enjoy our lives, our liberties, and our property under the full protection of the law. [Applause.]

Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by printing a paper by Mr. James A. Emery on this subject.

APPENDIX.

STATEMENT OF JAMES A. EMERY, ESQ., OF WASHINGTON, D. C., COUNSEL FOR NATIONAL ASSOCIATION OF MANUFACTURERS.

Mr. EMERY. Mr. Chairman, in view of the statement made by the proposer of the bill H. R. 11032, that it is substantially the measure commonly known as the Pearre bill, considered in a former Committee on the Judiciary, I ask that the two bills be inserted at the beginning of my statement, first the Wilson bill (H. R. 11032), and secondly the Pearre bill, a copy of which I will furnish, in order that the committee may realize by comparison the very marked differences between these two measures.

WILSON BILL.

(62d Cong., 1st sess. H. R. 11032. House of Representatives, June 2, 1911.)

Mr. WILSON of Pennsylvania introduced the following bill, which was referred to the Committee on the Judiciary and ordered to be printed:

A bill to regulate the issuance of restraining orders and procedure thereon, and to limit the meaning of "conspiracy" in certain cases.

Be it enacted, etc., That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employee, or between employers and employees, or between employees, or between persons employed and persons seeking employment, or involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property and property right must be particularly described in the application, which must be in writing and sworn to by the applicant, or by his, her, or its agent or attorney. And for the purposes of this act no right to continue the relation of employer and employee, or to assume or create such relation with any particular person or persons, or at all, or patronage or good will in business, or buying or selling commodities of any particular kind or at any particular place, or at all, shall be construed, held, considered, or treated as property or as constituting a property right.

SEC. 2. That in cases arising in the courts of the United States or coming before said courts, or before any judge or the judges thereof, no agreement between two or more persons concerning the terms or conditions of employment, or the assumption or creation or termination of any relation between employer and employee, or concerning any act or thing to be done or not to be done with reference to or involving or growing out of a labor dispute, shall constitute a conspiracy or other civil or criminal offense, or be punished or prosecuted, or damages recovered upon as such, unless the act or thing agreed to be done or not to be done would be unlawful if done by a single individual; nor shall the entering into or the carrying out of any such agreement be restrained or enjoined unless such act or thing agreed to be done would be subject to be restrained or enjoined under the provisions, limitations, and definitions contained in the first section of this act.

SEC. 3. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

PEARRE BILL.

A bill to regulate the issuance of restraining orders and injunctions and procedure thereon and to limit the meaning of "conspiracy" in certain cases.

Be it enacted, etc., That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and an employee, or between employers and employees, or between employees, or between persons employed to labor and persons seeking employment as laborers, or between persons seeking employment as laborers, or involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be particularly described in the application, which must be in writing and sworn to by the applicant or by his, her, or its agent or attorney. And for the purposes of this act no right to continue the relation of employer and employee or to assume or create such relation with any particular person or persons, or at all, or to carry on business of any particular kind, or at any particular place, or at all, shall be construed, held, considered, or treated as property or as constituting a property right.

SEC. 2. That in cases in the courts of the United States or coming before said courts, or before any judge or the judges thereof, no agreement between two or more persons concerning the terms or conditions of employment of labor, or the assumption or creation or termination of any relation between employer and employee, or concerning any act or thing to be done or not to be done with reference to or involving or growing out of a labor dispute, shall constitute a conspiracy or other criminal offense or be punished or prosecuted as such unless the act or thing agreed to be done or not to be done would be unlawful if done by a single individual, nor shall the entering into or the carrying out of any such agreement be restrained or enjoined under the provisions, limitations, and definition contained in the first section of this act.

SEC. 3. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

I have not, Mr. Chairman, the advantage of examining the record of discussion before this committee respecting this measure, but I did hear the proposer of the bill, Mr. WILSON, make a statement with reference to it at the last hearing of this committee.

I do not think that in the course of congressional legislation a more remarkable measure has been presented for the consideration of this committee. It is extraordinary not only for its admitted purposes, but for what it would actually effect through its provisions. The bill appears with the formal indorsement of the American Federation of Labor, and it is substantially declared that its object is to prevent the issuance of injunctions in trade disputes and to forbid the punishment of certain acts when done by labor combinations which the actors assert ought not, by their nature, to be restrained or punished,

and toward which they allege the law is oppressive in its character and has been oppressively administered by Federal judges.

Under the usual circumstances of discussion, I should first of all ask the committee to consider what occasion there is for complaint of this character and whether or not it is true that the present practice of issuing injunctions against some acts occurring in labor disputes and threatening civil and property rights is oppressive in its nature, and whether or not it has been improperly administered.

But before I ask the committee to consider that, which is the crucial test of the present complaint, I ask your attention for the terms of the measure itself, that you may realize it subverts rights of the most fundamental nature and greatly modifies legislation that has stood upon the statute books of this country for years, thus affecting existing law far beyond, I believe, the intention of its proponent.

The first section of the bill provides that in any "case" between an employer and employee, or between employers and employees, or persons employed and persons seeking employment, or in any "case" involving or growing out of a labor dispute, no injunction shall be issued by a Federal court except to protect property or a property right threatened with irreparable injury for which there is no adequate remedy at law. The second part of the first section thereafter proceeds to declare that for the purpose of this bill no right to continue the relation of employer and employee, or to assume or create such relation, or the good will of the business, or buying and selling commodities of any particular kind or at any particular place or at all, shall be "construed, held, considered, or treated as property rights."

You will observe that the first section, Mr. Chairman, is not, as the committee might gather from the statements of its proponent, confined to persons engaged in a labor dispute. It applies to any case between an employer and employee arising in a Federal court respecting the employment relation or which involves or grows out of a labor dispute. Consequently it would, first of all, affect a class of cases frequently arising, not only under the laws of the United States or treaties but under the laws of the different States, where, on account of diversity of citizenship, a Federal court is administering the law of the State.

Mr. NORRIS. If I may be permitted to interrupt, I think Mr. Wilson, as I remember it, in arguing on this bill, claimed that the first section could not have that broad a construction. He contends that it is confined entirely to labor disputes.

Mr. EMERY. I concede, Mr. NORRIS, that that is the declaration of Mr. Wilson, and that is probably his intention; but that is not the language of the bill, and I leave it to you gentlemen.

Mr. DAVIS. The various clauses of the bill are joined by the conjunction "or."

Mr. EMERY (reading):

"That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employee, or between employers and employees, or between persons employed and persons seeking employment, or involving or growing out of a dispute concerning terms or conditions of employment."

It must be manifest upon the face of it that in its terms it distinctly applies to any case respecting the relations enumerated that arises in a Federal court. It does not even say in civil cases but because of the fact that it is an attempt to modify the conditions under which a Federal injunction is to be issued it manifestly would apply only to an equitable proceeding. I need not take the time of this committee to call your attention, experienced lawyers as you are, to many classes of cases in which the right of injunction is constantly and necessarily used, cases growing out of differences between employer and employee that have nothing to do with labor disputes. For instance, I noted just yesterday the application for the issuance of an injunction in a case where an employer sought to restrain a former employee from betraying a trade secret which he had acquired during the course of his employment. It would obviously be a case within the meaning of that section. Nor need I attempt to enumerate the variety of cases that arise between employers and employees over the performance of contracts of various kinds and character.

Mr. WEBB. Would not the irreparable-damage provision cure that?

Mr. EMERY. I am assuming that there would be an irreparable damage, because in the case I allude to, in which the injunction is sought, of course the pleading is that irreparable damage would be done by the betrayal of the trade secret unless its disclosure is enjoined.

Mr. WEBB. Then this law would not prevent the injunctive relief.

Mr. EMERY. This bill would prevent injunctive relief by the second part of the first section, because it provides that no right resting upon the continuance of the relation of employer and employee can be protected by an injunction; the limitation likewise applies to the buying or selling of commodities or the creation or continuance of the relation of employer and employee, as, for instance, in a numerous class of cases where a singer or other performer breaks a contract and undertakes to perform at another theater. At present while an injunction may not issue to compel the specific performance of the contract, it will issue in a proper case to prevent the person, in view of the contractual breach, from appearing under another manager. These are merely illustrations, Mr. Chairman, of the scope of this bill, relations which I believe are beyond the intention of its author, but necessarily affected by its terms.

Furthermore, one can not examine the first section without inquiring what is there in the nature of the employment relation or a trade dispute itself that would lay the foundation of a Federal jurisdiction. The measure does not refer to any dispute affecting interstate commerce or any other thing specifically confided to the protection of the Federal Government, but declares any "case" appearing in a Federal court between an employer and an employee shall, by the first section of this bill, be arbitrarily denied equitable remedies administered by the same court in every other case in which those relations described do not exist.

This measure further provides that no right to assume the relation of employer or employee or to continue it, no right to good will in business, no right to buy or sell commodities, or to engage in business of any particular kind or at any particular place, or at all, shall, in any dispute in which the employment relation exists, be subject to the equitable protection of a Federal court unless a property right or property is involved. The restraining power of a court of equity is therefore limited to a controversy in which property or a property right is involved. That is a novel proposition to a body of lawyers, for all the textbooks that have been written upon this subject and the uniform decisions of our Federal and State courts are to the effect that not only are property and property rights the legitimate subjects of equitable protection, but likewise civil rights, and even personal rights of many kinds, under many circumstances. I could multiply cases indefinitely to confirm that proposition if I thought it necessary; but I am sure it is unnecessary here.

But moreover, Mr. Chairman, the specified rights, which in the latter half of the first section of this bill are expressly excluded from the protection of a court of equity, are property rights of the most fundamental character. Rights which have been the frequent subject of adjudication, not only by all the courts of last resort in the various States of the Union, but of the Supreme Court of the United States itself. It has been uniformly held that the right to engage in any particular business at any particular place, the right to buy labor and to sell it, is a fundamental right of liberty and property possessed by each citizen. Indeed, the right of liberty and the right of property are frequently so inextricably interwoven as to be indistinguishable in their exercise. It has been noted a curious thing that the Declaration of Independence nowhere mentions property rights; yet it has been said again and again by judges that undoubtedly the right of property is itself included in the right to pursue happiness. Mr. Justice Brewer, in a celebrated address at Yale University in 1891, which appears in the June number of the Yale Review of that year, argued that in the Declaration of Independence the right to acquire, possess, enjoy, and dispose of property was included in the right to pursue happiness. So it has been held again and again in various legal controversies that the constitutional guaranty that no person shall be deprived of property without "due process of law" embraces the very rights which by this bill are withdrawn from equitable protection. I shall not take up the time of this committee by citing many decisions of this character, which could be multiplied indefinitely. I will merely offer one or two for purposes of illustration, and ask the permission of the committee to include in my remarks the other citations which I do not present to the committee now, that I may save its time and mine.

The CHAIRMAN. That will be granted to you, Mr. Emery.

Mr. THOMAS. What is your definition of a property right?

Mr. EMERY. I think a property right can broadly be said to be any right embracing the acquisition, use, or disposition of property in any form. Of course, there are forms of property created by statute, and there are other forms of property which antedate our organic law, and are not created, but are merely recognized by it. It is to that especial class of rights I now call your attention. Thus, in the standard case of Algeyer *v.* Louisiana (165 U. S., 589), you will find the court says the constitutional guaranty embraces—

"the right of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, and earn his livelihood by any lawful manner, to pursue any livelihood or avocation, and for that purpose to enter into all contracts that may be proper, necessary, and essential in his carrying out the purposes above mentioned."

Mr. THOMAS. Do you think that one man can have a property right in the labor of another?

Mr. EMERY. He can, by voluntary contract. I do not think there is any doubt of that; is there, Mr. Thomas?

Mr. THOMAS. I am not sure of that; I wanted your idea about it.

Mr. EMERY. If I enter into a contract with you to perform services for you, you surely have a property right in my service to the extent that I have agreed to deliver it to you for compensation.

Mr. THOMAS. If I were to break the contract, of course you would have an action at law against me.

Mr. EMERY. I presume so; but what would it be based upon? It would be based upon the loss you had suffered through my failure to perform that contract, and the court would be protecting your property right.

Mr. THOMAS. Would the court then issue an injunction to make me perform that contract?

Mr. EMERY. You mean if the specific performance of the contract involved human service?

Mr. THOMAS. Yes, sir.

Mr. EMERY. Ordinarily not. There are exceptional cases in which courts have issued injunctions for the specific performance of a contract of a special character.

Mr. THOMAS. According to that, a man can contract himself into being a slave.

Mr. EMERY. No; that is not the intention at all. But those cases are specific, and involve a very abstruse branch of equity jurisprudence very rarely enforced. For all practical purposes no contract for the performance of labor can be enforced by injunction.

Mr. MOON. The court never enforced a contract specifically in the case of a singer; they simply prohibited her engaging anywhere else.

Mr. EMERY. There is a case in New York——

Mr. MOON. Not compelling her to sing. It prohibited her from singing anywhere else.

Mr. EMERY. Of course, I say it is a marked exception to the ordinary rule.

Mr. NYE. Even if they did that it would be a mandamus and not an injunction.

Mr. EMERY. That is a form of injunction.

The CHAIRMAN. In the case of the singer in New York to which you refer the court did seek to compel the singer to perform the contract and sing for the particular other party to the contract.

Mr. EMERY. Yes, sir.

Mr. MOON. That has all been done away with now.

Mr. EMERY. Yes. I allude to that only as an exceptional case. The uniform doctrine of the American courts is expressed in the opinion in Arthur *v.* Oakes, written by Mr. Justice Harlan. This was an appeal from the decision in Farmers Loan & Trust Co. *v.* The Northern Pacific R. R. Co. (60 Fed., 803). In that case Mr. Justice Harlan held that no injunction would lie to compel men to remain at work, no matter if the anticipated quitting would result in loss of life or peril to property. This decision establishes a condition fundamentally different from that existing under the English law, for until the year 1875 it was possible, under Lord Elcho's act, passed in 1867, and under preceding legislation, to specifically enforce a contract for labor; and justices of the peace throughout England specifically enforced contracts for labor, and were empowered to punish the breach of a contract by a laborer as a crime. I shall later desire to call the attention of the committee to the statutes and the English practice on that subject, in order to show the committee that English legislation, which is offered here as a precedent, has no authority in law or fact.

Mr. NORRIS. I would like to ask you about that decision of Mr. Justice Harlan you have cited in your brief.

Mr. EMERY. I have no brief here; but I shall cite the decisions—Arthur *v.* Oakes, 63 Fed., 319.

Mr. NORRIS. I wanted to read it myself, and I would like to have the reference made.

Mr. EMERY. That decision by Mr. Justice Harlan is the standard case on that subject. It was rendered by him when sitting in circuit.

Mr. NORRIS. I understand that; but I wanted to read it again. I would like to have the reference in your remarks so that I can find it.

Mr. EMERY. I shall be glad to furnish it.

Mr. THOMAS. Do you think a thing is right just because a judicial tribunal or a number of judicial tribunals have declared that thing to be right?

Mr. EMERY. Declared what to be right, Mr. Thomas?

Mr. THOMAS. Any given thing, simply because a judicial tribunal declares a thing to be right.

Mr. NORRIS. As I understand, Mr. Emery is not contending that that is right, but that it was the former practice in England.

Mr. THOMAS. Because a court has decided a matter to be right, does it necessarily follow that that thing is right?

Mr. EMERY. I do not know whether Mr. Thomas is referring to a specific case now.

Mr. THOMAS. No; just a general question.

Mr. MOON. That is what Mr. Gompers is trying to find out.

Mr. THOMAS. My question is this: Because a court decides a certain thing to be right, or a number of courts decide a certain thing to be a principle of law, do you think necessarily it is right and correct?

Mr. EMERY. I must confess, Mr. Thomas, that under orderly government, under constitutional government, I can do but one thing, either bow to the decision of the court when I have exhausted all ordinary forms of appeal, or else turn to the legislature for relief; and in the meantime I must obey the law, or law ceases and anarchy begins.

Mr. THOMAS. That is what they are doing in this act, turning to the legislature for relief.

Mr. EMERY. Yes, sir; but I am at this time undertaking to call to the attention of the committee that there are certain rights which are beyond the reach of the legislature.

Mr. WEBB. That is, the declaration of what is property and what is not property.

Mr. EMERY. I say, there are fundamental rights of property—the property, for instance, which a man has in his own labor—beyond legislative invasion. The right of property carries with it the right to have that property protected, and to deprive a person either of the property itself or of the means of protecting it and to leave him with no remedy is to deprive him of a constitutional guaranty.

Mr. WEBB. Do you think we can declare that good will is not property?

Mr. EMERY. I do not.

Mr. WEBB. That is what I was getting your idea on; I wanted to hear you on that.

Mr. EMERY. But my contention, so far as this first section is concerned, would not rest on that. I contend you can not say that a man's own labor is not property or that a man's right to conduct a lawful business is not a property right.

Furthermore, Mr. Chairman, the first section is open to still further objection, on the ground that it undertakes to establish rights in accordance with the class of controversy involved and under the same circumstances to give a different set of rights to every citizen. Thus, if this first section were to be construed in accordance with the declaration of Mr. Wilson, persons engaged in labor controversies would not possess certain rights of property entitled to the protection of a Federal court, although the same rights would be entitled to equitable protection when assailed by persons not engaged in a labor dispute. The rights of each person would thus depend, not upon their nature, but upon the character of the controversy in which they were involved. A right of property guaranteed by the Constitution of the United States would be entitled to all of the protection courts could give it under every circumstance, except when it was assailed in the course of a labor dispute. But in that case the right of property would be lost at the surface of the labor dispute and possess no protection until it emerged, if it survived, in which event, by the magic of this bill, it would regain its submerged rights.

I therefore insist that the first section of the bill—apart from its ambiguities and from the endeavor to lay a foundation for a Federal jurisdiction upon a relationship unconnected with any subject matter of Federal control—is objectionable on two grounds: First, it undertakes to deprive persons in controversies of the character enumerated of all equitable protection for civil rights, and, secondly, it undertakes to make one set of rights and remedies with respect to those engaged in labor controversies and another for those not so engaged. And, finally, that it undertakes to absolutely destroy fundamental property rights which have been repeatedly held by the courts of the United States to be beyond the reach of congressional invasion.

Mr. MOON. The Supreme Court has already decided that that classification is unconstitutional so far as State legislation is concerned, under the fourteenth amendment.

Mr. EMERY. Absolutely. The position of the courts with respect to these rights is not new. It is as old as the existence of courts in England or the United States. Lord Bramwell, in the case of Regina *v.* Druitt (10 Cox C. C., 592), calls attention to this when he says:

"No right of property or capital was so sacred or carefully guarded by the law of the land as that of personal liberty. That liberty was not liberty of the body only—it was also a liberty of the mind and will; and the liberty of a man's mind and will—to say how he should bestow himself, his means, his talent, and his industry—was as much a subject of the law's protection as was that of his body."

In the Slaughterhouse cases (83 U. S., 36) our own court said, again, through Mr. Justice Bradley:

"For the preservation, exercise, and enjoyment of these rights the individual citizen as a necessity must be left free to adopt such calling, profession, or trade as may seem to him most conducive to that end. Without this right he can not be a free man. The right to choose one's calling is an essential part of that liberty which is the object of Government to protect; and a calling when chosen is a man's property and right. Liberty and property are not protected where these rights are arbitrarily assailed."

And in the great decision written by Mr. Justice Harlan, United States *v.* Adair (208 U. S.), he reiterated the doctrine, which has been enunciated in the Federal courts time out of mind, and in all the courts of the United States which have had occasion to pass upon the issue involved, that the right of a man to enter into a contract for the sale of his labor and the right of another to enter into a contract for purchase of labor were at once rights of liberty and property; and Congress could not invade such rights without a violation of the fifth amendment. In that case, you will remember, the Government undertook to indict and punish one Adair, an agent of the Louisville & Nashville road, because he had discharged a man, or threatened to discharge him, on account of his membership in a union, in violation of a certain provision of the Erdmann Act. The court pointed out that the right to quit and the right to discharge were correlative rights, and you could not take away from the citizen the right to discharge without asserting the right to take away from him the right to quit. You could not curtail one end of the contractual power without curtailing the other end, so that every invasion of the right of the employers to discharge would be an invasion of the right of the employee to quit.

Mr. WEBB. Do they not say you could not do that as an incident to the interstate-commerce power in the Constitution?

Mr. EMERY. The issue raised by Mr. Justice Harlan was whether or not the provision was repugnant to the fifth amendment to the Constitution, and not the interstate-commerce clause. The question was not whether Congress could so act under the interstate-commerce clause, but whether or not, possessing the power to regulate commerce, they could, with the prohibition of the fifth amendment staring them in the face, take away from a citizen the right to exercise that right of liberty and property.

Mr. WEBB. But Congress based its power to pass such a law on the commerce clause of the Constitution, I believe.

Mr. EMERY. They based their right, yes. But the court said they could not exercise it because, under the system of checks and balances, of course, one provision of the Constitution set off against another.

Mr. NYE. This bill would run against an employee who sought to enjoin his employer from discharging him?

Mr. EMERY. Of course; or from blacklisting him, for that matter. It would favor a combination of employers who agreed among themselves that they would not employ a particular man themselves and would undertake to prevent his employment by others; that is, if the agreement arose out of a labor dispute.

Mr. NORRIS. The writ could not issue in that case.

Mr. EMERY. It could not lie for the other reason—that the man would not have any property right at stake. Under this bill his right to be employed would cease to be a right. He would have no right to enter into a contract with an employer; that could be protected from the interference of third parties by a court of equity.

But, Mr. Chairman, the second section of the bill is still more astounding in its proposals. It provides that in cases arising in the courts of the United States, or coming before said courts—and I should say here, Mr. Chairman, that as the word "cases" is not qualified we must look to the subject matter to ascertain whether it applies to civil or to criminal cases or to both, and from the subject matter included it obviously applies to both civil and criminal cases and to all courts of the United States. It would be a limitation not only upon the controversies of individuals but likewise upon those of the Government of the United States itself and upon States appearing in the Supreme Court of the United States.

Mr. THOMAS. Mr. Emery, do you contend that the legislature or Congress has not the right to limit a property right, define it, and say what it shall be?

Mr. EMERY. I do not question the right of Congress to limit some property rights, but there are others which are beyond the control of Congress. Of course, in the exercise of a property right, as distinguished from its ownership or possession, Congress can limit, as every legislature necessarily must, the uses of property, to secure the equal right of every citizen to the use and enjoyment of his property.

Mr. THOMAS. Can not State legislatures, for instance, absolutely say who shall and who shall not own property, certain kinds of property of their own; how they shall inherit, and so on?

Mr. EMERY. Our courts have been pretty busy, Mr. Thomas, for years, invalidating legislation which attempted to confiscate certain people's property or permitting a reasonable return on it. I am sure the gentleman does not contend for a minute that the Congress of the United States can say the property which A has should now belong to B. That is precisely what is done here.

Mr. THOMAS. I beg to differ with you about that. Can not Congress define and limit property rights?

Mr. EMERY. It can define and limit some property rights, but there are some that it can not. It depends on whether your definition is to be regulative or prohibitive.

Mr. MOON. It can also create some rights.

Mr. EMERY. It can, of course, create many. It creates many valuable property rights. Every time it grants a pension it creates a property right. Every time it permits an incorporation in the District of Columbia it creates property rights. For many property uses of which we speak, quite apart from their tangible objects, have been held to be and are property. Thus we tax as property a corporate franchise, or a license, or a right to use a highway or a street.

The second section provides that in any case, whether civil or criminal, arising in the courts of the United States, or coming before said courts, no agreement between two persons either concerning the labor relation or concerning any act or thing to be done or not to be done, either in reference to or growing out of a labor dispute, shall neither constitute a conspiracy or be punished or prosecuted or become basis of an action for damages, unless the thing agreed to be done or omitted would be unlawful if done by one person. Needless to say, Mr. Chairman, no lawyer can hear that proposition without realizing that it is a subversion of the whole law of conspiracy, based as it is upon the belief that there are many things not unlawful for one person which become unlawful when numbers agree to do them. Thus, while any man may refuse to sell his product to another, it is quite a different thing if two or more persons agree not to sell to another. It is one thing for a man to refuse to deal with another; it becomes quite a different proposition when many agree not to deal with him until he does something they require him to do, or until he does something to another person which they demand him to do. That doctrine has been recognized since the foundation of English law, from the first statute on conspiracy, in the reign of Edward the First, to the last modification of it by the English Parliament in 1906.

Mr. MOON. It absolutely abolishes the distinction between conspiracy and the overt act, does it not?

Mr. EMERY. Absolutely; because, of course, it can neither be unlawful nor criminal for two persons to have a common intention to do the same thing until that intention is reduced to an agreement. When they agree to do an unlawful thing, the agreement itself, irrespective of any overt act, is either a crime or civilly unlawful, in accordance with the nature of the thing agreed to be done; and no other element enters until we consider the legality or criminality of particular means.

Mr. HOWLAND. In that connection, Mr. Wilson called our attention, arguing this same proposition, to these voluntary organizations, one of which I have in mind, for instance, where they refused to purchase eggs because they were so high priced, a voluntary organization. Another one was formed a year ago, which people very generally joined, refusing to purchase meat because of the high prices that the retailers were charging the public. Does that come under the head of conspiracy or boycott, or how do you differentiate those?

Mr. EMERY. In the first place, it is not an agreement directed against any person; it is an agreement like a pledge among a large number of people not to take a drink. It is not directed against any individual,

and does not affect any individual particularly. It passes out of the realm of the abstract, as it were, and enters into the realm of the concrete when made with reference to a particular individual.

Mr. HOWLAND. It applies to the corner butcher in a particular neighborhood.

Mr. EMERY. It applies to all butchers, like the resolution of a vegetarian society, that agrees not to eat meat.

Mr. MOON. A conspiracy is defined as an agreement to do an unlawful thing——

Mr. EMERY. Exactly.

Mr. MOON. Or an agreement to do a lawful thing in an unlawful manner. But an agreement not to eat meat is not an agreement to do an unlawful thing.

Mr. HOWLAND. That is another way of stating the proposition. The agreement is not to buy any meat.

Mr. MOON. That is not an unlawful thing.

Mr. EMERY. The agreement not to eat it would necessarily include an agreement not to buy it.

Mr. NORRIS. Would not the intention had by the parties govern?

Mr. EMERY. Of course.

Mr. NORRIS. If they should make an agreement not to buy meat of you, if you were a butcher, for the purpose of running you out of business——

Mr. EMERY. Exactly.

Mr. NORRIS. That would be a vastly different proposition.

Mr. EMERY. It is the only department of the law where the court enters into the conscience of the actor.

Mr. NORRIS. Yes.

Mr. EMERY. Intention is the dominant standard by which to judge the act of a combination, as has been said again and again by many courts.

Let me call the attention of the committee to the effect of section 2 of this bill upon existing legislation before presenting any legal objection to it. If this measure were the law, any agreement between two or more persons relating to the employment contract or with reference to any act or omission involving, growing out of, or in furtherance of a trade dispute would not be unlawful or criminal or render the parties liable in damages unless the thing agreed to be done or not to be done would be unlawful if done by one person. This privilege is not confined to the parties engaged in the trade dispute. It covers any agreement made by persons with reference to such dispute, whether they be engaged in it or not.

Now, Mr. Chairman, observe the legal effect of this provision upon the operation of the Sherman Act as it is now interpreted. At present I think it will be conceded that any one of the great meat packers may lawfully fix the price at which he will sell his own commodity, but if two or more packers make an agreement to fix the price of meat, we have a contract in restraint of trade—a Beef Trust—that may be prosecuted, fined, or dissolved. But if the packers of the United States or any number of the great firms engaged in that business—the Armours, the Swifts, or others equally well known—in furtherance of a strike or because of it entered into an agreement to raise the price of their product, either to meet the expense of the struggle or to make the consumer realize the cost of the strike to him and excite his sympathy for their interest, the agreement, this bill being the law, would be lawful, for, having grown out of a trade dispute, its legality would be no longer tested by the Sherman Act but by the standard of this bill, and the act of the combination raising the price of meat would not be unlawful if done by one person.

Suppose two or more of the railroads of the United States were again faced with the conditions created by the great Debs strike of 1894, many arteries of commerce hopelessly obstructed, cars idle on many tracks, property in the hands of the mob, the carriers unable to fulfill their contracts with passengers or shippers or perform the duties laid upon them by law. Let us assume the strike was precipitated by a demand for increased pay which the carriers believed their existing revenues would not permit them to grant, and in order to meet these demands they agreed to raise their rates, or suppose that they engaged new men to take the places of the old employees and found themselves heavily burdened with the costs of the strike, and for that reason they agreed to raise their rates. Now, I submit that it is not unlawful for one carrier to raise its rates, subject to whatever action the Interstate Commerce Commission may take, but it is unlawful for two carriers to agree to fix a rate. In this instance under either condition suggested the agreement would be born of a trade dispute. It would be in furtherance of it or had grown out of it, and under the standard established by this bill it could not be unlawful under the interstate-commerce act or the act of 1890, for the third section of this measure would have repealed every act or part of an act in conflict with its own terms and standards. Let me add another illustration by calling to your minds the state of facts presented in the Toledo & Ann Arbor Railroad *v.* The Pennsylvania Co. (54 Fed. Rep., 730).

The plaintiff in that case was engaged in a trade dispute with its trainmen. It was the only carrier involved in that dispute, but under rule 12 of the Brotherhood, then in operation, the trainmen of all the other roads refused to handle the cars of the Toledo & Ann Arbor. The Pennsylvania road was required by law to afford equal facilities to the cars of all other carriers over its tracks. The employees of that road by refusing to handle the cars of the Toledo & Ann Arbor under threat of strike were conspiring to compel the Pennsylvania road to violate the law. The Pennsylvania road was thereupon enjoined from refusing to handle the cars of the Toledo & Ann Arbor, and the officers of the Railway Brotherhood were restrained from issuing or continuing in force any order or rule which required the employees in the service of the Pennsylvania road to refuse to handle the cars of the plaintiff. Under the second section of this bill, no such injunction could issue, because it would be perfectly lawful for any individual trainman to threaten to quit, or to actually do so, if the Pennsylvania road handled any cars which for any reason, good, bad, or indifferent, was objectionable to him.

It must therefore be evident that the Sherman Act, the interstate-commerce act, and every section of the Federal criminal code relating to conspiracy, agreements, or combinations would be modified or repealed by this bill to the extent that every combined action forbidden by them would be measured when done in connection or because of a trade dispute by the standard established in this bill.

It is an elementary principle of construction that a sovereign legislates with respect to its own jurisdiction. When the Congress legislates, it does so within the sphere of Federal authority. There are many acts of a criminal and unlawful nature which Congress has not made it an offense for an individual to do which is covered by statutes respecting conspiracy. There is no Federal statute making it a crime for an individual to destroy railroad signals, derail trains, or obstruct the movement of commerce, saving only the mails; yet conspiracies to this end undertaken in the course of a labor dispute can now be restrained or prosecuted. Under the provisions of this bill, and under the standard established by it, such acts would no longer be reachable within the Federal jurisdiction by the remedies now known to the law.

Mr. Chairman, the conditions to which I refer are not imaginary, but very real. They have been the incidents of great labor disturbances of the past and may belong to those of the future. Complaint has been recently made of labor conditions in the steel industry. Suppose a great struggle broke out there between employers and employees, and the manufacturers of steel entered into an agreement because of various circumstances connected with the struggle to raise the price of steel. Each manufacturer may now fix the price of his own commodity. Under this bill, if many or all agreed to do it in furtherance or because of a trade dispute in which they had been involved, the contract would be legal where it is now unlawful.

To turn again to the experiences of the past, you will remember that in 1894, during the Debs strike, the attention of Judge Grosscup, then sitting in the Circuit Court of the United States at Chicago, was called to a newspaper statement to the effect that certain railway managers were undertaking to employ men in the place of the strikers, but had agreed among themselves that they would not employ or undertake to employ men to operate the trains, in order that they might excite public sympathy in their behalf and cause the public to realize the distress of the labor disturbance more keenly than they did. Judge Grosscup called together the Federal grand jury in Chicago, directed their attention to this statement, and caused them to make an investigation of its truth, advising the grand jury that if any or all of the railroad managers had entered into an agreement of that character, it amounted to a conspiracy to prevent the operation of the railroads and the parties to the agreement were liable to indictment. But, Mr. Chairman, had this bill then been the law and had the condition described been a fact, the agreement would not have made any party to it liable for indictment, because it would have been and is perfectly lawful for the manager of any one road to discharge or refuse to employ any individual, and had the agreement alleged grown out of the labor dispute in the manner described it would have been perfectly lawful under the terms of the Wilson bill. So this measure would validate an agreement among railroads to prevent the performance of their own functions as common carriers, provided it was made to further their interest as parties to a trade dispute.

One might multiply the illustrations indefinitely, for the principle applies to every department of combined action, and you will observe that every agreement of the kind described in this bill is not only made proof against civil or criminal liability, but its exclusion is made secure against interference by the terms of the latter part of the second section, which provides that no such agreement shall be enjoined by any Federal court.

Mr. NYE. Is not the essence of a conspiracy an agreement, anyway?

Mr. EMERY. Yes.

Mr. NYE. And one man can not make an agreement with himself, can he?

Mr. EMERY. Evidently not, although I suppose some men do make agreements with their conscience and violate the contract.

Mr. WEBB. One gentleman the other day illustrated his objection to this legislation by saying that in case a big strike should occur and strike breakers were induced to go in and take the places of the strikers, and a strike breaker passing along the street should be accosted—or, not accosted, but if one of the strikers should point his finger at him and follow him down the street—that would probably not be a violation of the law; but if every one of the strikers should line themselves up along the street and point their fingers at him that would be a violation of the law, and ought to be a violation of the law, but would not be if this law was passed. What is your opinion about that?

Mr. EMERY. Certainly, Mr. Chairman, it validates any act resting upon the intimidation of numbers which one person might lawfully do. It is well known that the mere presence of numbers of men assuming a threatening attitude, but uttering no word of speech, is a most powerful coercive influence. Mr. Justice Brewer said in his remarkable address before the American Bar Association on the "Movement of coercion":

"When a thousand laborers gather around a railroad track and say to those who seek employment that they had better not, and when that advice is supplemented every little while by a terrible assault on one who disregards it, everyone knows that something more than advice is intended. It is coercion, force; it is the effort of the many, by the mere weight of numbers, to compel the one to do their bidding."

The English reports likewise present many cases of criminal prosecution for intimidation by mere numbers, although the trade-disputes act of 1906 amended the conspiracy and protection of property act of 1875 so as to provide that it should not be unlawful merely to attend at or near a house or place where a person resides or works merely to obtain or communicate information. Thus a typical case, to pursue the illustration suggested by Mr. Webb, is that of Wilson *v.* Renton (1910 S. C. (J.) 32 Ct. of Just.).

This was a criminal proceeding under section 7 of the conspiracy and protection of property act of 1875, to which the amendment of the trade-disputes act of 1906, to which I have referred, was offered as a defense. It appeared that during a coopers' strike two strikers remained near the homes of two workmen who had not joined the strike, and when these two left their houses the pickets signaled to a crowd which had gathered and followed the men back to work. It was held that there was no evidence of effort to obtain or communicate information, as permitted under subsection 1 of section 2 of the trade-disputes act of 1906. The defendants were convicted. These are common forms of intimidation peculiar to labor disputes which this bill would legalize within the Federal jurisdiction. Thus, too, a body of men might gather before a boycotted store, and there are many people who would not enter it under such circumstances because they feared annoyance or trouble. Indeed, Justice Brewer touched the very essence of intimidation in his description.

So I submit that it must be evident that section 2 of this bill would not only work a revolution in the law of conspiracy, but would seriously impair private and public rights by the modification its terms necessarily work on every legislative act in the Federal statute book predicated upon the existing theory of the acts of combinations and conspiracies, for you must observe that section 3 of this bill reads: "That all acts and parts of acts in conflict with the provisions of this act are hereby repealed." So that every measure of law now in existence in contradiction to the theory of this bill would be superseded by it.

Mr. MOON. What do you think of the constitutionality of this provision in operation?

Mr. EMERY. It must be obvious, Mr. Chairman, that it is open to the same constitutional objection as the first section. It undertakes to provide one standard of law for all agreements as to acts or omissions in reference to labor disputes, and another standard of law for the same acts when not done in reference to labor disputes. The same agreement made by the same individuals would be legal or illegal, criminal or innocent, according as it grows out of a labor dispute or does not. It has been repeatedly said that the equal protection of the law assures the protection of equal laws. This is precisely the type of invidious discriminating legislation condemned by Mr. Justice Harlan in the case of Connolly *v.* The Union Sewer Pipe Co. (184 U. S., 540), Ex Parte Drayton (153 Fed., 986), and in many familiar decisions of a similar nature.

Mr. WEBB. It is 5 minutes of 12 o'clock. Mr. Emery, how long will you want to conclude your remarks?

Mr. EMERY. Mr. Chairman, I have had many interruptions, and while I am very glad to answer questions, you can perceive that it deprives me of much time that I need.

Mr. WEBB. Yes; we all see that. We are very much interested in your argument, and we would be glad, if you think it will do just as well, to have you file a brief, and we will all be pleased to read it; or we might be able to give you a little more time now.

Mr. EMERY. Will you give me 15 minutes more and let me conclude with a brief?

The CHAIRMAN. Of course, there is no disposition on the part of any member of the committee not to hear Mr. Emery as long as possible, but in the very nature of things, we have had so many hearings and we have so many things to do that we can not, of course, give any gentleman as much time as he would like to have. The agreement was that you were to have one hour, and it was stated to you at that time what the circumstances were under which this committee was laboring. We have consumed perhaps more time than any other committee, at this session of Congress, with hearings, and our time is so constantly drawn upon that we have hardly had time to go into executive session to consider matters that ought to have been considered there. However, without objection, Mr. Emery will proceed for 15 minutes, subject to the understanding that if there is a call of the House the committee will go.

Mr. EMERY. Of course, Mr. Chairman, I believe that interrogatories during the course of a discussion of this character greatly contribute to the illumination of the discussion. Nevertheless, they frequently divert it and prevent an orderly presentation of argument. For that reason I shall ask the chairman to permit me, if I do not conclude within 15 minutes, to include other matter which I desire to lay before the committee.

The CHAIRMAN. You shall have that privilege. Of course, the committee assumes that you will not abuse the privilege, and that your extension will be reasonable.

Mr. EMERY. I have undertaken to analyze the terms and describe the effect of this measure and to indicate what seemed to me the insuperable constitutional objections to the proposals of this bill, but I have only suggested the serious consequences that would follow to the private citizen and to the public interest if Congress undertook to give what is here asked.

Let me now revert to a topic which, but for the extraordinary nature of this proposal, I should have presented first:

A revolutionary request of this character can be predicated on but one of two things: Either the law as it now is is oppressive in its nature or it is oppressively administered.

As a preliminary, Mr. Chairman, let me correct the exaggerated notion which prevails as to the frequency with which the Federal courts issue the writ of injunction in labor disputes. To hear the clamor against "government by injunction" one might imagine that one of the leading if not the chief occupation of a Federal court was the issuance of injunctions in labor disputes. There is a sort of delusion that the courts of the United States are constantly crowded by employers seeking writs of prohibition against labor unions, and that there is a sort of competition between them and the State courts to see who shall issue such orders most frequently.

Therefore, before I ask you to consider the nature of the circumstances under which the writ has been and is issued in labor disputes, let us pause and inquire how often applications for its use are made. I have during the last few years carefully watched the records of the Federal courts and have recently compiled some figures in respect to this matter. The Federal Reporter discloses that from January 1, 1903, to January 1, 1912, a period of nine years, 473 injunctions were issued by district and circuit courts of the United States, and of this number but 25 related to labor disputes, leaving 447 covering every other form of litigation. (For list of such cases see Mr. Emery's argument before Committee on the Judiciary, Feb. 14, 1912.)

But it may be said there are other reasons why the Federal Government should set an example in the matter, because the State courts issue injunctive writs in labor disputes in larger numbers than are justified, and restraining legislation in a Federal jurisdiction would offer a deserved example to the courts of the States.

Of course, such observations as I am now making leave out of consideration the justification or lack of justification for the issuance of such writs. But to show further the continuous exaggeration indulged respecting the frequency with which labor injunctions are being issued, in alleged proof of the ease with which they may be obtained, I call your attention to reliable statistics from one of the great industrial States—Massachusetts. The data are supplied by the Massachusetts department of labor, in Labor Bulletin No. 70, for December, 1909, and is compiled by the Bureau of Statistics. It discloses that during 11 years covered by the investigation, from 1898 to 1908, there were reported 2,002 strikes. In 66 of these, or 3.29 per cent, the employers concerned sought injunctions restraining the strikers from doing certain acts complained of. In 46 strikes, or 2.24 per cent of the total number, injunctions were issued. In 9, or 0.44 per cent, there were proceedings for contempt of court. In 2 strikes of the 2,002 reported, there were convictions for contempt following the disobedience of a writ.

The CHAIRMAN. Were the injunctions in those cases issued by the Federal courts?

Mr. EMERY. No, sir; they were issued by the State courts of Massachusetts.

The CHAIRMAN. Were any issued by the Federal courts?

Mr. EMERY. In Massachusetts?

The CHAIRMAN. Yes; during that period you speak of.

Mr. EMERY. I do not remember a single one issued in that judicial district.

Mr. WEBB. What period of time does the data cover?

Mr. EMERY. With respect to Massachusetts, it includes 11 years, from 1898 to 1908, inclusive. That which I offered you respecting the Federal courts included the period from January 1, 1903, to January 1, 1912—nine years. In relation to this subject, let me in passing call your attention to a comment made not long since by the Supreme Court of the United States.

In the case of Ex parte Young, an action in which the attorney general of the State of Minnesota was cited for contempt, it was argued by counsel that if the power of the Federal courts to interpose by injunction in proceedings of the kind at issue were sustained it would mean a flood of injunctions, and the inferior Federal courts might fall under the temptation to misuse their power. To this the Supreme Court replied on March 23, 1908 (207 U. S.):

"To this it may be answered in the first place that no injunction ought to be granted except in a case reasonably free from doubt. We think such rule is and will be followed by all the judges of the Federal courts."

From this comment it must be evident that the Supreme Court neither was in possession of information nor has as yet been impressed in the course of its experience with instances in which Federal judges were abusing their power to issue injunctions in labor or other cases.

During the course of many discussions had before this committee concerning measures to regulate or limit the injunctive power of Federal courts we have again and again challenged those who charge those tribunals with abuses of power to produce their evidence before this committee.

In response to that challenge and to the reiterated request of members of the committee Mr. Gompers produced, three years ago, a body of manuscript which the committee caused to be printed under the title of "Injunction data filed by Samuel Gompers." Fully half the pamphlet is given over to matter having no relation to injunctions, including decisions referring to the eight-hour law, employers' liability, the maritime contract, the bakers' 10-hour case, and the Danbury hatters' decision, in which no injunction was involved, all of which decisions, while perhaps objectionable to Mr. Gompers, have, with reference to the issue before this committee, like the flowers that bloom in the spring, "nothing to do with the case." There were, however, some 18 injunctive orders covering the period between 1893 and 1907, but the orders were unaccompanied by any criticism, and no effort was made to specify any or all of the critic's objections.

I have examined all of these orders, making a brief analysis of each, and, with the permission of the committee, I shall file this statement with my remarks, including with it the list of Federal injunctions to which I have referred, issued during the period from January 1, 1903, to January 1, 1912. I have separated the orders issued in labor disputes during that period from all others, and arranged them so that the committee will perceive the comparison. You can thus observe at a glance the number and character of the Federal writs issued.

The CHAIRMAN. Without objection, you will have liberty to print what you wish.

Mr. EMERY. The statement is as follows:

ANALYSIS OF INJUNCTION DATA FILED BY SAMUEL GOMPERS WITH THE HOUSE JUDICIARY COMMITTEE, 1908.

[This data was unaccompanied by any comment or criticisms and comprehends 23 decisions, orders, and complaints relating to injunctions.]

In one instance the exhibit is merely a complaint in the case of the Grand Trunk R. R. Co. *v.* Gratiot Lodge et al. The case does not appear in the reports and upon the face of the complaint there is no evidence that even a restraining order was issued. In two other instances, Boyer *v.* The Western Union Telegraph Co. (124 Fed., 246) and Platt *v.* The Philadelphia & Reading R. R. (65 Fed., 660), decisions are presented in which petition for restraining orders were sought by certain labor organizations against employing corporations and denied. These obviously are not evidence of abuse of power by any judge in the issuance of injunctions. The right to discharge exercised in both cases is fully vindicated by the decision of the Supreme Court of the United States in Adair *v.* U. S. (208 U. S.), while the alleged blacklist in the Boyer case consisted of the opinion of a record maintained by the company itself in which was entered the cause of discharge.

In two other cases, Bender *v.* The Typographical Union and the Buck's Stove & Range Co. *v.* The American Federation of Labor, the injunctions were issued by the Supreme Court of the District of Columbia. In the Bender case a preliminary injunction was denied and the application for a permanent injunction granted after a full hearing and argument. From the final decree the respondents entered an appeal, which they subsequently withdrew of their own volition, thus confessing the futility of their own contentions.

In the Buck's case the preliminary injunction was issued two months and a half after the service of the motion to show cause, and on the motion to make the injunction permanent the defendants did not contest the decree. Exercising, however, a right of appeal, they found through it an appropriate remedy by use of which they secured a slight modification of the permanent injunction. Their chief contention appears to have been that a court of equity infringed upon the right of free speech and the press whenever it undertook to enjoin the publication of matter intended to further the prosecution of a boycott.

In support of this contention, Gompers, Mitchell, and Morrison, in a proceeding for contempt which reached the Supreme Court of the United States, pleaded that the injunction was void because it had in the manner described infringed upon the freedom of speech and the press. This contention was met, set aside, and the injunction fully sustained in that respect by the Supreme Court. (Gompers *v.* Buck's Stove & Range Co., 219 U. S., 340.)

The remaining injunctive data consist of 18 orders issued by Federal courts between December, 1893, and November, 1907. They are here considered seriatim:

Farmers Loan & Trust Co. v. Northern Pacific Railroad.

(60 Fed., 803.)

It appears that the receivers of the Northern Pacific Railroad filed a petition seeking permission to put certain wage scales in effect January 1, 1894, and asking that certain defendants, members of the Brotherhood of Railway Trainmen, be enjoined against interfering with the operation of the road by combining and conspiring to quit its service for that purpose. An order in accordance with prayer of the complainant was issued December 19, and a motion to modify the same by P. M. Arthur, grand chief of the Railway Brotherhood, was heard February 15, 1894. On that date the order was modified by striking out the words "and from further recommending, approving, or advising others to quit the service of the receivers of the Northern Pacific Railroad on January 1, 1894, or at any other time." Further modification was refused.

Appeal was taken from this refusal, and in Arthur *v.* Oaks (63 Fed. Rep., 319) Mr. Justice Harlan, sitting in circuit, further modified the order appealed from. It was contended on this appeal that the court had exceeded its power by enjoining the employees of the receivers "from combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody or embarrassing the operation of said railroad, and from so quitting the service of said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad."

Mr. Justice Harlan held that the clause embodied two distinct propositions, one relating to combinations and conspiracies to quit the service of the receivers with the object or intent to cripple the property or embarrass the operation of the road in their charge; the other having no reference to combinations and conspiracies to quit or to the object and intent of so quitting, but applying to employees "so quitting" as to cripple the property or prevent or hinder the operation of the road. The appellate court sustained the order with respect to the first proposition and eliminated from it the latter phrase "and from so quitting the service of said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad."

It is apparent from the elaborate decision of Judge Jenkins that he was facing with great embarrassment and for the first time the difficult problem of deciding how far a court might go in protecting property of a quasi public nature for the operation of which the court was responsible. The error made by the court resulted very evidently from a sincere effort to perform its duty and was fully corrected by the court of appeals, nor has any similar error been made in the issuance of the writ of injunctions since. The case is not an evidence of abuse of discretion, but a mistake corrected on appeal. A remedy was in the hands of the defendant and secured by its use a decision which strikingly vindicated the rights of the employees.

Ames v. The Union Pacific (Jan. 27, 1894).

In this case an injunction was issued on petition of the receivers of the Union Pacific Railroad in practically the language sustained by Mr. Justice Harlan in Arthur *v.* Oaks. Twelve days after this order was issued in Ames *v.* Union Pacific (60 Fed., 674), the court refused to approve a reduction of wages by the receiver or a change in the rules affecting working conditions until the employees had been notified of the proposed change and were given a proper opportunity to point out to the court any inequality or injustice threatened by such change.

Under these circumstances the order can not be legally or practically objectionable. It deserves, on the other hand, the approval of workingmen themselves for the evidence it supplies of considerate regard for the rights of the employees of the road.

Western Coal Mining Co. v. Puckett.

(Circuit Court of the United States for the Western District of Arkansas.)

The exhibit is a naked restraining order unaccompanied by the complaint or any other document throwing light on the action, nor does the case appear in any report. It is therefore uncertain, assuming the order to have been issued, that any objection was made by defendants at the time of its issuance or that any subsequent effort was made to dissolve or modify it. Upon its face, the order suggests an exceedingly serious situation, inasmuch as it enjoins the display of firearms and the marching of armed men over roads adjacent to the complainant's mines for the purpose of intimidating the complainant's employees. In view of the conditions which surround the exhibit, no criticism is sustained or sustainable.

Reinecke Coal Mining Co. v. Wood.

(Circuit Court of the United States for the Western District of Kentucky, 112 Fed., 497.)

In this case a restraining order was issued November 13, 1901, and promptly heard on November 25, motion for a preliminary injunction being granted after argument and hearing. The opinion discloses a remarkable condition. It appears that certain coal miners of Indiana and Illinois, members of the United Mine Workers, complained that certain miners belonging to their organization in Kentucky were not receiving the wage schedule fixed at Indianapolis, the Illinois and Indiana miners fearing they could not maintain their own schedule unless that of the Kentucky miners was increased. Agents of the union were therefore dispatched into Kentucky to bring about an increase in the pay of union miners there. As a result of this effort, operators—notably of Central City, Ky.—agreed to the schedule demanded provided it was adopted in a majority of the mines in another district, that in Hopkins County, where it appears nonunion men were chiefly employed.

From the evidence before the court it formed the opinion that the relations between the employers and employees in these nonunion mines were mutually satisfactory, and that for the most part the employees did not wish to join the union.

Under these circumstances it appears that the defendants and others invaded the Hopkins district, armed and in great numbers, establishing camps in the vicinity of the nonunion mines, which camps were maintained for many months, the roads and various approaches to the mines were picketed and patrolled for the purpose of intimidating nonunion miners and coercing them to join the union, and thus bring about a strike unless the union scale was adopted. The evidence disclosed that nonunion men were continually threatened and assaulted and the adoption of defensive measures caused instant collisions and disorder.

The court finds that the conditions sought to be brought about were "undesired and vigorously repelled by the employers and a vast majority of the employees." The court is evidently so impressed with the conditions presented to it that it remarks: "If this court can not in a case like this protect the rights of a citizen when assailed, as those of the complainant have been in this instance, there is a decrepitude in judicial power which would be mortifying to every thoughtful man."

The circumstances of record do not, therefore, disclose either in the facts of the case or in the terms of the order itself a cause for criticism, but rather a proper and necessary exercise of the court's power.

Wabash Railroad Co. v. Hannahan.

(Circuit Court of the United States for the Eastern District of Missouri, 121 Fed., 563.)

In this case a temporary restraining order was issued on a verified bill of complaint, and many affidavits alleging a combination and conspiracy by the Brotherhood of Firemen and Railway Trainmen to compel the exclusive recognition of their organization and the discharge by complainant of all nonmembers, this to be accomplished by the calling of a strike for that purpose, and it was further alleged and supported by affidavits that plaintiff's employees were entirely satisfied with their conditions of employment. Defendants filed an answer denying plaintiff's allegations, and especially that the employees were satisfied with working conditions, and declaring that defendants were engaged in good faith in bettering the condition of employees and that the strike they were parties to was sanctioned for the purpose of peacefully and lawfully accomplishing these things.

At the hearing the court vacated the restraining order, holding that the weight of evidence did not show an unlawful combination, but only a rightful purpose on the part of the Railway Brotherhood, acting through their representatives, to peacefully and lawfully quit the plaintiff's employ for the purpose of bettering their condition.

This case does not show the slightest abuse of discretion but, on the contrary, that the union involved was fully sustained in the lawful exercise of its rights and found in orderly procedure a complete vindication of its claims.

Mobile & Ohio R. R. v. E. E. Clark.

(Circuit Court of the United States for the Eastern District of Tennessee, May 11, 1903.)

The exhibit consists of a restraining order issued on the filing of a complaint May 11, 1903, and made returnable May 13, two days later. The case does not appear in the reports, and no record is offered to show what considerations led the court to issue the order in question, nor does it appear that it was contested or made the subject of any complaint at the time of its issuance. Under such circumstances, since the order is not objectionable on its face, it can not be perceived that there is just ground for criticism.

Newport Iron & Brass Foundry Co. v. Iron Molders' Union.

(Circuit Court of the United States for the Southern District of Ohio, Western Division, Sept. 22, 1904.)

The exhibit is an alleged copy of a final injunction evidently issued after argument and hearing. The case does not appear in the reports and as the defendants were evidently represented by counsel and were unable to sustain their contentions in court and made no effort at appeal, a ground for criticism is not apparent.

Kemmerer v. Haggerty (July 15, 1905).

(Circuit Court of the United States for West Virginia, 139 Fed., 693.)

This injunction was issued during the course of a strike of United Mine Workers against the Pennsylvania Consolidated Co., a West Virginia corporation, which was made a defendant, together with the mine workers involved, by certain nonresident stockholders. The corporation and the miners' organization were citizens of the same State, the corporation sought an injunction in the State courts against certain of the miners, alleging that they were interfering with the operation of the corporation's property by intimidating and coercing nonunion employees. At this point certain Pennsylvania stockholders of the corporation endeavored to obtain a Federal injunction for the same purpose, asserting to that end their diverse citizenship.

A temporary restraining order was issued on the filing of the stockholders' complaint, and immediately thereafter motion for a preliminary injunction was heard. The order was then vacated on the ground that the action of the nonresident stockholders was collusive and the court had no jurisdiction.

It is difficult to conjecture the character of the complaint against this action, for the court refused to do precisely what the employing stockholders desired it to do, and sharply rebuked and defeated their effort to establish a bogus jurisdiction for the purpose of obtaining a Federal injunction.

A. T. & S. F. R. R. v. Gee.

(139 Fed., 582, and 140 Fed., 153.)

The exhibit shows proceedings for contempt growing out of violations of an order issued in May, 1904. An examination of the record shows the order to have been issued during a strike of machinists against the Santa Fe road and shows that no effort was made by defendants to modify or vacate the order and that no objection was raised to it of any character by counsel or defendants. The opinion discloses picketing accompanied by intimidation and coercion and constant violence to persons and property. The court remarks:

"There would have been no occasion for its interference if there had been any honesty of purpose by the local authorities to maintain peace and order. Intimidation, threats, violence, and brutality were all winked at because of the belief on the part of certain police officers that they would be kindly remembered on future election days."

The contempt proceedings are remarkable for the leniency and consideration shown to the respondents. The defendants were cited in April, and after hearing the evidence in July the court took the matter under consideration, making an oral statement at the time, which, by direction, was sent to each defendant, the court stating therein that it was intended as a warning, and that in the pronouncement of its judgment the court would be governed to a considerable extent by the conduct of the defendants in the meantime. In October the court reviewed the previous proceedings and discovered that three of the defendants, after receiving copies of its written communication delivered in July, had continued to openly violate the court's order by intimidating employees. Three of the defendants were then found guilty.

If it be assumed that criticism is directed at the character of the order issued, that ground for objection, whatever it may be, is found now which apparently did not exist and was not made by the defendants at the time the order was issued. If the criticism is directed at the punishment for contempt, the record of the case discloses on the part of the court the most considerate conduct compatible with the enforcement of its authority.

Allis-Chalmers Co. v. Iron Moulders' Union.

(150 Fed., 155; 166 Fed., 45.)

The record in this case discloses that the application for a preliminary injunction was denied, the defendants' answer having substantially overcome the plaintiff. A supplementary application for injunction was filed three months later and granted after argument and hearing. The opinion showed the evidence disclosed picketing, accompanied by threats, intimidation, and much actual violence. The final decree was modified on appeal.

The criticism can not be said from the record of the case to disclose anything more than a defeated litigant's dissatisfaction with a decision of the court. The rights of the defendants are fully protected throughout by counsel, as the proceedings disclose, and the modification of the final decree shows the defendants in possession of an adequate remedy to correct trial error.

Pope Motor Car Co. v. Keegan.

(150 Fed., 148.)

The record discloses a temporary restraining order granted on the filing of complaint, with numerous affidavits and exhibits. Hearing on motion for preliminary injunction was had within eight days. At this proceeding argument was heard and oral evidence presented. A preliminary injunction was then allowed against such defendants as were shown to have participated in coercion and intimidation. The order is moderate in its terms and in the usual form, and the proceedings disclose the rights of defendants were fully protected by counsel and the court exceedingly strict in framing the order. Nothing can be found in the order or the proceedings not fully sustained by the uniform practice and decisions of the higher courts.

Nat'l Telephone Co. v. Kent.

(Circuit Court of the United States for the Northern District of West Virginia, 156 Fed., 173.)

In this case an original and amended bill were filed. On the amended bill, exhibits, and affidavits a preliminary injunction was granted. The defendants demurred to the bill on the ground that sufficient cause for the preliminary injunction was not presented. The court overruled the demurrer, holding that a boycott then being prosecuted was illegal, and that a newspaper joined as a defendant could be restrained from publishing matter intended to carry on the boycott.

The position assumed by the court in this case is fully sustained by the Supreme Court of the United States in the case of Gompers *v.* Buck's Stove & Range Co. (219 U. S., 340).

Rocky Mountain Bell Telephone Co. v. Montana Federation of Labor.

(Circuit Court of the United States, Ninth Circuit, District of Montana, 156 Fed., 189.)

The record discloses the injunction in this action was based upon a boycott directed against the telephone company during the course of a strike. The employees remaining in the service of the company were intimidated and assaulted, and by the same tactics others were prevented from entering its service, while a variety of abusive and threatening circulars were issued to merchants and business men, threatening the withdrawal of patronage from all merchants who used plantiff's telephone lines during the trade dispute. Especially threatening circulars were distributed among plaintiff's actual female employees and applicants for employment.

The law of this case is fully sustained by familiar decisions of long standing, and the facts disclose a distressing condition in which women no less than men were subjected to threats and violence. It is a case which exceptionally justifies the issuance of an injunction, and, indeed, presents the writ in most beneficent operation.

Hitchman Coal & Coke Co. v. John Mitchell.

(172 Fed., 963.)

This case has been the subject of especial criticism, and was the occasion of a resolution by the Senate. The facts have been so continuously misrepresented that it is worthy of special consideration. In this case a restraining order was issued on the 24th of October, 1907, the last day of the court at the place of issuance, and set for hearing on the first day of the next term of court in that district, January 14, 1908. On that date counsel for defendants entered a motion to dismiss as to certain defendants not served with process, and asked for a continuance, which was granted until March 18, 1908, on which date counsel for defendants again asked a postponement, which was had at their instance until May 26, at which time further request for continuance by the defendants was refused and motion for a temporary injunction heard and granted, the counsel for defense stating "they did not desire to be heard in opposition to said motion, so far as the granting of a temporary injunction at the time was concerned, and not consenting, but objecting thereto."

So far, therefore, as the injunction in this case is criticized because of the lapse of time between its issuance and the hearing thereon, it must be evident that the critic makes a complaint which was not shared by counsel for the defense, who continued to cause the case of their own clients to be postponed until the court refused to continue it further.

During the period which elapsed between the granting of the restraining order and the return thereon, counsel for the defense had it within their power, if they thought the interval too great, to make an application for the advancement of the hearing or to make a motion for the modification or vacation of the order, and had they taken such action and their motion been refused, they would have had under the existing statute a ground of appeal, which appeal would have had precedence.

But the record discloses not only that they made no effort to do any of these things, but they were unwilling to join issue at every subsequent hearing, and after months of delay caused by their repeated requests for continuance, they offered no argument or motion on hearing.

As to the law in the case, it is indisputable with the facts disclosed. It appears that the Hitchman Coal & Coke Co. were owners of about 5,000 acres of coal lands equipped with a plant which produced about 1,400 tons of coal per day. The company had on hand at the time of this action contracts for future delivery to its full capacity. Prior to April, 1906, the company operated its mines under a trade agreement with members of the United Mine Workers. On that date a strike was ordered by that union, and the members thereof who were employees of the Hitchman Co. quit their employment. The evidence discloses that they distinctly stated they had no grievance against the plaintiff, but the strike order was issued on account of a difficulty with coal operators in another section of the country.

The plaintiff offered at this time, if the men would remain at work, to pay an advance in wages from and after April 1 that might be agreed to by the other coal operators with whom the United Mine Workers were at odds, but the men were not allowed to return to work on this condition. It then appears that for two months following the company was unable to operate its plant. Thereupon, being unable to effect an arrangement with its union employees, it began to employ nonunion men, and in order to protect itself against a repetition of the conditions which had resulted in the stopping of its operations, it required each new employee to agree not to join the United Mine Workers, a contract which they were entitled to require as a matter of legal right and which under the circumstances was justified by their experience as a matter of expediency.

Under these circumstances the United Mine Workers undertook by threats, intimidation, and persuasion to cause the new employees who had entered into the contract referred to, to violate that contract and join their union. These are the facts which the pleadings and the record disclose. Under these circumstances the injunction issue for the purpose of protecting the plaintiffs in the exercise of their right to employ such labor as they saw fit and to make and be protected in a contract which by expensive experience they had learned to be essential to the uninterrupted operation of their plant. The defendant mine workers undertook to procure a breach of these contracts, endeavored to reunionize the works and subject their control and operation to the will and policies of the union.

Surely nothing is more clearly settled than that equity will intervene to protect the inviolability of a contract against the malicious interference of third parties. This is precisely the point upon which the Supreme Court of the United States decided the case of Bitterman *v.* Louisville & Nashville Railroad (207 U. S., 205). This was an action brought against a combination of scalpers undertaking to procure breaches of contract by passengers who had agreed not to resell tickets purchased from the plaintiff company. The court held it an actionable wrong when one "maliciously interferes in a contract between two parties" to induce one of them to break the contract to the injury of the other. The conspiracy of the scalpers was enjoined, the precise issue upon which the writ of injunction issued in the Hitchman case. This action illustrates perhaps better than any other can why labor organizations desire a different standard for the issuance of restraining orders to protect property rights in labor disputes from that which exists in other forms of litigation, for with such a standard of law established the injunction issued in the Bitterman case could not have issued in the Hitchman case.

Mr. EMERY. To return again to the manner in which the writ of injunction has been used in labor disputes, it has been frequently urged in argument here that the restraint of boycotts by injunction and the punishment of a boycotting combination criminally is a novel thing, an example in itself of the improper extension of the equity jurisdiction against which complaint may be justly made.

I know of no period of time in which the boycott has not been unlawful, and I beg to submit to the committee probably the oldest judicial record of a boycott. It is taken from a case decided in the year 1221 A. D., and entitled "The Abbot of Lilleshall *v.* The Bailiffs of Shrewsbury." The record was published by the Selden Society in 1877, and the translation of the old law Latin goes like this:

"The Abbot of Lilleshall complains that the bailiffs of Shrewsbury do him many injuries against his liberty, and that they have caused proclamation to be made in the town that none be so bold as to sell any merchandise to the abbot or his men upon pain of forfeiting 10 shillings, and that Richard Peche, the bedell of the said town, made this proclamation by their orders. And the bailiffs defend all of it, and Richard likewise defends all of it, and that he never heard of any such proclamation made by anyone. It is considered that he do defend himself twelve-handed (with 11 compurgators), and do come on Saturday with his law."

There, Mr. Chairman, in those 10 lines of that ancient complaint the principles and practices of the modern boycott are clearly set out. Of course the old word "defend" means "deny." You will observe that the abbot sets up in his complaint that the bailiffs by combination are doing injury "against his liberty"; the abbot is claiming the right to have trade flow unobstructed to and from him, and to deal freely with his fellows; and he is restrained by a combination which, for some purpose of its own, is undertaking to penalize anyone who deals with him. He says "they have caused proclamation to be made." This is the ancient form of the modern "We don't patronize" list, and the "bedell" is performing the functions committed to Mr. Gompers in our day. Finally, you will observe that all the acts complained of are admitted to be illegal by both the beadle and the bailiffs, because they deny committing them. They do not undertake, as do our modern boycotters, to assert the right to penalize anyone who deals with the object of their ostracism. They say, "We did not do it." The beadle says he did not make the proclamation and did not hear anyone make it. Of course the plaintiff, being a man of church, did not settle the controversy by gage of battle but by wager of law.

Mr. THOMAS. What was the punishment?

Mr. EMERY. The punishment appears to have been a fine. It appears that in this proceeding they were held to answer. The further result I can not ascertain.

Mr. THOMAS. They were fined to begin with?

Mr. EMERY. Yes; they were held to answer and fined. The record is obscure and does not show the ultimate fate of the action.

Mr. THOMAS. Did they determine how much the fine was?

Mr. EMERY. I do not know the amount.

The advocates of legislation of this character continually point to the labor legislation of England as a precedent for their proposals, and, particularly, to the trade disputes act of 1906. I think it important that the committee should have this legislation before them, and to that end I ask to file as a part of this argument the English trade disputes act of 1906 and the conspiracy and protection of property act of 1875. The former enactment, so frequently called to your attention, is in its major aspects an amendment of the latter, and it is impossible to understand the effect of the act of 1906 upon the criminal or civil liability of English workmen in trades disputes, unless the two measures are considered together. Is there any objection to my request?

Mr. MOON. Certainly not.

The CHAIRMAN. Without objection, the acts referred to by you will be included as a part of your remarks and as a part of this hearing.

Mr. EMERY. They are as follows:

CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875, AND TRADE DISPUTES ACT, 1906.

[Ch. 86. An act for amending the law relating to conspiracy and to the protection of property, and for other purposes (Aug. 13, 1875).]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited as the conspiracy and protection of property act, 1875.

2. This act shall come into operation on the 1st day of September, 1875.

Conspiracy and protection of property.

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute "between employers and workmen" [words "between employers and workmen" repealed by pt. 3, sec. 5, trade disputes act, 1906] shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offense against the state or the sovereign.

A crime for the purposes of this section means an offense punishable on indictment, or an offense which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offense punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by act of Parliament the duty, or who have otherwise assumed the duty, of supplying any city, borough, town, or place, or any part thereof, with gas or water, willfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding £20 or to be imprisoned for a term not exceeding three months, with or without hard labor.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gas works or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed shall cause it to be renewed with all reasonable dispatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding £5 for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this act shall be liable on summary conviction to a penalty not exceeding 40 shillings.

5. Where any person willfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding £20 or to be imprisoned for a term not exceeding three months, with or without hard labor.

Miscellaneous.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, willfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall, on summary conviction, be liable either to pay a penalty not exceeding £20 or to be imprisoned for a term not exceeding six months, with or without hard labor.

7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority—

1. Uses violence to or intimidates such other person or his wife or children or injures his property; or

2. Persistently follows such other person about from place to place; or

3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or

4. Watches or besets the house or other place where such other person resides or works or carries on business or happens to be, or the approach to such house or place; or

5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road—

shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding £20 or to be imprisoned for a term not exceeding three months, with or without hard labor.

NOTE.—Last paragraph of this section repealed by second paragraph, second section, trade-disputes act, 1906. "Attending at or near the house or place where a person resides or works or carries on business or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section."

8. Where in any act relating to employers or workmen a pecuniary penalty is imposed in respect of any offense under such act, and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offense may, if they think it just so to do, impose by way of penalty in respect of such offense any sum not less than one-fourth of the penalty imposed by such act.

Legal proceedings.

9. Where a person is accused before a court of summary jurisdiction of any offense made punishable by this act and for which a penalty amounting to £20 or imprisonment is imposed the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offense by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offense and not an offense punishable on summary conviction, and the offense may be prosecuted on indictment accordingly.

10. Every offense under this act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this act recoverable on summary conviction may be prosecuted and recovered in manner provided by the summary jurisdiction act.

11. Provided, that upon the hearing and determining of any indictment or information under sections 4, 5, and 6 of this act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses.

12. In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this act the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than 15 days and not more than 4 months after the decision of the court from which the appeal is made.

(2) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof.

(3) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace, with or without sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court.

(4) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody.

(5) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeals thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon rehear and decide the information in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

Definitions.

13. In this act—

The expression "the summary jurisdiction act" means the act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter 43, entitled "An act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any acts amending the same; and

The expression "court of summary jurisdiction" means

(1) As respects the city of London, the lord mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and

(2) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and

(3) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

(4) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the summary jurisdiction act: *Provided*, That, as respects any case within the cognizance of such justice or justices as last aforesaid, an information under this act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the lord mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

14. The expression "municipal authority" in this act means any of the following authorities; that is to say, the metropolitan board of works, the common council of the city of London, the commissioners of sewers of the city of London, the town council of any borough for the time being subject to the act of the session of the fifth and sixth years of the reign of King William IV, chapter 76, entitled "An act to provide for the regulation of municipal corporations in England and Wales," and any act amending the same, any commissioners, trustees, or other persons invested by any local act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this act be deemed to be a municipal authority or company or contractor upon whom is imposed by act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

15. The word "maliciously" used in reference to any offense under this act shall be construed in the same manner as it is required by the fifty-eighth section of the act relating to malicious injuries to property; that is to say, the act of the session of the twenty-fourth and twenty-fifth years of the reign of her present majesty, chapter 97, to be construed in reference to any offense committed under such last-mentioned act.

Saving clause.

16. Nothing in this act shall apply to seamen or to apprentices to the sea service.

Repeal.

17. On and after the commencement of this act, there shall be repealed:

I. The act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter 32, entitled "An act to amend the criminal law relating to violence, threats, and molestations"; and

II. "The master and servant act, 1867," and the enactments specified in the first schedule to that act, with the exceptions following as to the enactments in such schedules; that is to say,

(1) Except so much of sections 1 and 2 of the act passed in the thirty-third year of the reign of King George the Third, chapter 55, entitled "An act to authorize justices of the peace to impose fines upon constables, overseers, and other peace or parish officers for neglect of duty, and on masters of apprentices for ill usage of such their apprentices; and also to make provision for the execution of warrants of distress granted by magistrates," as relates to constables, overseers, and other peace or parish officers; and

(2) Except so much of sections 5 and 6 of an act passed in the fifty-ninth year of the reign of King George the Third, chapter 92, entitled "An act to enable justices of the peace in Ireland to act as

such, in certain cases, out of the limits of the counties in which they actually are; to make provision for the execution of warrants of distress granted by them; and to authorize them to impose fines upon constables and other officers for neglect of duty, and on masters for ill usage of their apprentices," as relates to constables and other peace or parish officers; and

(3) Except the act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter 7, entitled "An act to explain the acts for the better regulation of certain apprentices"; and

(4) Except subsections 1, 2, 3, and 5 of section 16 of "The summary jurisdiction (Ireland) act, 1851," relating to certain disputes between employers and the persons employed by them; and

III. Also there shall be repealed the following enactments making breaches of contract criminal, and relating to the recovery of wages by summary procedure; that is to say,

(a) An act passed in the fifth year of the reign of Queen Elizabeth, chapter 4, and entitled "An act touching divers orders for artificers, laborers, servants of husbandry, and apprentices"; and

(b) So much of section 2 of an act passed in the twelfth year of King George the First, chapter 34, and entitled "An act to prevent unlawful combination of workmen employed in the woolen manufactures, and for better payment of their wages," as relates to departing from service and quitting or returning work before it is finished; and

(c) Section 20 of an act passed in the fifth year of King George the Third, chapter 51, the title of which begins with the words "An act for repealing several laws relating to the manufacture of woolen cloth in the county of York," and ends with the words "for preserving the credit of the said manufacture at the foreign market"; and

(d) An act passed in the nineteenth year of King George the Third, chapter 49, and entitled "An act to prevent abuses in the payment of wages to persons employed in the bone and thread lace manufactory"; and

(e) Sections 18 and 23 of an act passed in the session of the third and fourth years of Her present Majesty, chapter 91, entitled "An act for the more effectual prevention of frauds and abuses committed by weavers, sewers, and other persons employed in the linen, hempen, union, cotton, silk, and woolen manufactures in Ireland, and for the better payment of their wages, for one year, and from thence to the end of the next session of Parliament"; and

(f) Section 17 of an act passed in the session of the sixth and seventh years of Her present Majesty, chapter 40, the title of which begins with the words "An act to amend the laws," and ends with the words "workmen engaged therein"; and

(g) Section 7 of an act passed in the session of the eighth and ninth years of Her present Majesty, chapter 128, and entitled "An act to make further regulations respecting the tickets of work to be delivered to silk weavers in certain cases."

Provided that—

(1) Any order for wages or further sum of compensation in addition to wages made in pursuance of section 16 of "the summary jurisdiction (Ireland) act, 1851," may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the employers' and workmen act, 1875, and not otherwise; and

(2) The repeal enacted by this section shall not affect—

(a) Anything duly done or suffered, or any right or liability acquired or incurred under any enactment hereby repealed; or

(b) Any penalty, forfeiture, or punishment incurred in respect of any offense committed against any enactment hereby repealed; or

(c) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this act had not passed.

NOTE.—Sections 18 to 20, inclusive, relate to procedure, penalties, and appeal in Scotland, and section 21, the last of the act of 1875, relates to procedure in Ireland.

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An act to provide for the regulation of trades-unions and trade disputes. [December 21, 1906.]

[6 Edw. VII, ch. 47.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. The following paragraph shall be added as a new paragraph after the first paragraph of section 3 of the conspiracy and protection of property act, 1875:

"An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable."

II. 1. It shall be lawful for one or more persons, acting in their own behalf or on behalf of a trade-union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

2. Section 7 of the conspiracy and protection of property act, 1875, is hereby repealed from "attending at or near" to the end of the section.

III. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills.

IV. 1. An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

2. Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the trades-union act, 1871, section 9, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

V. 1. This act may be cited as the trade disputes act, 1906, and the trade-union acts, 1871 and 1876, and this act may be cited together as the trade-union acts, 1871 to 1906.

2. In this act the expression "trade union" has the same meaning as in the trade-union acts, 1871 and 1876, and shall include any combination as therein defined, notwithstanding that such combination may be the branch of a trade union.

3. In this act and in the conspiracy and protection of property act, 1875, the expression "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or nonemployment, or the terms of the employment, or with the conditions of labor, of any person, and the expression "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises; and, in section 3 of the last-mentioned act, the words "between employers and workmen" shall be repealed.

Mr. EMERY. With the indulgence of the committee, let me briefly call its attention to the condition of law and fact out of which the English legislation grew. I shall not take up your time with a discussion of the niceties of the common-law doctrine of conspiracy in its application to trade unions prior to the nineteenth century, a subject upon which scholars of the Temples are still divided, but from 1800 to 1824 a series of enactments known as the "combination acts" practically outlawed trade unions, making unlawful by *statute* any organization to fix wages.

In 1824 the combination acts were repealed and the widest privilege given to organizations of workmen by a statute of that year. This, however, exciting general alarm, was repealed in 1825, leaving the common law in force. Combinations of either masters or workmen to raise or depress wages were, in common-law proceedings between this period and 1870, held unlawful and sometimes criminal as in restraint of trade (Regina *v.* Druitt, 10 Cox C. C., 592; Hilton *v.* Eckersley, 6 E. and B., 47), while a combination to strike and a concerted withdrawal from employment were declared criminal. This doctrine undoubtedly survived from the legislation beginning with the statute of labors in 1349, in which the state asserted the right to fix wages, and consequently a combination to raise or depress them would be a conspiracy against the law.

During this period such labor organizations as existed suffered under the disadvantage of being unable to protect their own funds, because apart from the question of criminal responsibility they were deemed illegal organizations, as some of their purposes were held to be in restraint of trade. They could not therefore maintain an action in court, and thus a treasurer or other agent of the organization who embezzled its funds or retained them could not be proceeded against. (Hornby *v.* Close, L. R., 2 Q. B., 153, 1867; Farrer *v.* Close, L. R., 4 Q. B., 602, 1869.)

Great as were these disabilities of the trade union as an organization, the disabilities of the individual workmen were even greater at this period. For at common law, enforced in later years by a variety of statutes, a breach of contract on the part of the laborer was regarded as a criminal offense, while on the part of the master it was only a civil wrong. This condition grew out of ancient legislation beginning with the statute of labors in the fourteenth century, reenforced by the statute of apprentices in the seventeenth century, and strengthened by various enactments of the four Georges, which made it a criminal offense for a workman to depart from his service before the time agreed upon, or before the work he had undertaken was completed. Parliamentary returns in 1863 showed 10,000 cases of breach of contract prosecuted in the courts in a single year. At that time, and even under Lord Elcho's act of 1867, which undertook to remedy this condition, a contract of service could be specifically enforced. Even under Lord Elcho's act, which was avowedly remedial legislation, imprisonment for breach of contract of service remained to be enforced by a justice of the peace in "aggravated" cases.

These were the conditions which demanded parliamentary reform in England in the interest of workmen. Their counterpart never existed in this country. Neither the individual nor the organized workman has ever labored under these disadvantages here. A breach of contract has never been criminally punishable, and even in the earliest period of the trade-union movement in this country, when we were most affected by the English legal example in Pennsylvania, New York, and Virginia, the simple right to collectively withdraw from employment in furtherance of a lawful demand for changed condition of employment was always sustained by the courts.

But in England, until the passage of the trade-union acts of 1871 and 1876, workmen could not be said to have a legal right to organize or act collectively. Those statutes gave the trade-unions a limited legal right of existence by declaring "The purposes of any trade union shall not by reason merely that they are in restraint of trade be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise." This, and this alone, removed the ancient disabilities of the common law and the statutes. But on the same day of the passage of the trade-union act of 1871, there was likewise enacted the criminal-amendments act, which defined as criminal offenses all those acts of intimidation or coercion common to trade disputes.

This act was succeeded by the conspiracy and protection of property act of 1875, which displaced it. The act of 1875 was brought into being largely as the result of the decision in Regina *v.* Bunn (12 Cox C. C., 316), being a strike of gas stokers in the year 1872 against a London gaslight company. The men were prosecuted and convicted of conspiracy because of their joint breach of contract. This case made it evident that while other disabilities had been removed a strike in any form was still prosecutable as a conspiracy at common law, and to overcome this condition and permit a joint withdrawal from employment the section of the act of 1875, so frequently referred to here, was passed, providing "that an agreement between two persons to further a trade dispute should not be indictable as a conspiracy if the act when committed by one person would not be punishable as a crime." The legislative history of this act and the subsequent decisions of English courts showed that this provision of the act of 1875 had no other purpose than to permit men to jointly withdraw from employment without being indictable for conspiracy.

But this section I describe is not left to stand alone, but is subjected to very many exceptions, which by examining the act you will perceive greatly modify and limit its apparent privilege.

Nothing in it exempts from punishment any person guilty of conspiracy, for which a punishment is awarded by act of Parliament. Nor does it affect the law relating to riot, unlawful assembly, breach of peace, or sedition. And, further, you will observe that in section 7 it is provided "every person who with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority—

"1. Uses violence to or intimidates such other person or his wife or children, or injures his property; or

"2. Persistently follow such other person about from place to place; or

"3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or

"4. Watches or besets the house or other place where such other person resides or works or carries on business, or happens to be, or the approach to such house or place; or

"5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road, may be imprisoned for a term not exceeding three months at hard labor or a fine not exceeding £20."

This is the law of England to-day, but more than that, and to this I especially direct the attention of the committee, the fourth section of the conspiracy and protection of property act of 1875, frequently enforced, makes it a criminal offense, punishable by £20 fine or three months at hard labor, for any person employed by a gas or water company to willfully break his contract of service, alone or in combination with others, if he have reasonable cause to believe that the probable consequence of his so doing will deprive some section of the community of gas or water; and the fifth section provides, under the same penalty, that if any person, in any employ, either by himself or in combination with others, willfully breaks his contract of employment, having reasonable cause to believe that his doing so will endanger human life or cause serious bodily injury or expose valuable real or personal property to destruction or serious injury, he is criminally punishable. These extraordinary criminal provisions, utterly unknown to the law of this country, would not, I submit to you, be accepted by any labor leader who is asking you to enact the principles of English labor legislation.

The English trade-dispute act of 1906, which you will observe by examination is partially an amendment of the conspiracy and protection of property act of 1875, permits under strict limitations "picketing" for observation only. The chief and most striking change in the civil law which it produced was to relieve the funds of a trade union from liability for the acts of its agents when done in furtherance of a trade dispute. So that in the matter of tort liability under these conditions, the British trade union is a privileged character. Thus, in an action for malicious prosecution by an advertising agent against the Amalgamated Society of Railway Servants (Bussy *v.* Society of Amalgamated Railway Servants, 24 T. L. R., 437, 1908) the court held that the statute of 1906 protected the funds of the trade union against any action in tort, and remarks, "From the humiliating position of being on a level with other lawful associations of His Majesty's subjects the statute of 1906 has relieved all registered trade unions, and they are now supra legens, just as the medieval emperors were supra grammaticum. The defendant societies are therefore entitled to judgment."

Let me give the committee one further example. I contend that it is the purpose of the second section of the pending bill to give precisely this privilege and special exemption from the law to agreements growing out of trade disputes, but before I call the committee's attention to the fundamental differences between the power of Parliament and that of Congress to arbitrarily confer such special privileges upon any selected class of citizens, let me offer you an example of the terrible injustice which such legislation can work upon the laborer who most needs protection from the terrible coercive power of a trade-union directing its whole force against the object of its displeasure. There appears in the English court of appeals cases that of Conway *v.* Wade, decided on July 17, 1908. The facts are thus stated by Mr. Justice Farwell: "The facts are simple. For 18 years the plaintiff has been a member of the laborers' union intermittently. Seven years ago he was fined 10s., but did not pay, and no action was ever taken against him for such default.

"In September, 1907, he rejoined the union and got his card of membership and showed his receipt to the defendant on September 25, who told him that it was all right and that he could go to work. On October 1 he was given higher wages as charge man. On October 2 the defendant told Baines, the foreman, that he had better stop the plaintiff or there would be trouble with the men, and he did so. The defendant is a district delegate of the laborers' union; he is not a laborer. It was no part of his duty to inflict a fine or to stop any man from working; he had no authority to call out the men without the sanction of the executive, and he had no such sanction. He gave no notice to the plaintiff, nor did he suggest that he pay the 7-year-old fine. There were two members of the union—Mullen and Greene—in the same town. Mullen, having been secretary of the branch to which the plaintiff's fine should have been paid, instigated the defendant to get the plaintiff turned out; then another man—Linney, a ship steward—told the foreman that if the plaintiff kept in the men would stop. The plaintiff saw the defendant and remonstrated and asked him if he would stop him wherever he went. The defendant replied, 'Certainly. I will,' and the plaintiff said, 'Have I got to starve? What shall I do?' and the defendant replied, 'Do what you like.'

"The jury found that the defendant by his threats intended to and did prevent the plaintiff from getting or retaining employment in order to compel the plaintiff to pay the 10s., and to punish him for nonpayment. But, briefly, the case is this: The defendant, who is not a workingman at all and who had no authority on behalf of any trade-union or others to do so, threatened to call out the men at Redheads in order to compel payment of a fine more than 7 years old, of a trifling amount, the payment of which he was not entitled to demand, the nonpayment of which was no business of his, at the invitation of two workingmen who objected to the plaintiff. He so threatened, with the intention and effect of depriving the plaintiff of all work and chances of work, and contemplated with such complaisant indifference a result that the man would have to choose between starvation and the workhouse."

The jury gave damages to the plaintiff Wade and the appeal was on the question of whether or not the defendant's act was done in furtherance of a trade dispute, the court of appeal holding it was, and the plaintiff had no recourse. In expressing this conclusion Mr. Justice Farwell said, "It was possible for the court to defend individual liberty against the kings and barons because the defenses rested on the law which they administered; it is not possible for the courts to do so when the legislature alters the law, for they can only administer the law. The legislature can not make evil good, but it can make it not actionable."

"* * * I regret the conclusion, because I think that it inflicts a cruel hardship on the plaintiff, and it is no consolation for him that far greater hardships will doubtless be inflicted in the future on persons more innocent than himself, persons who were not able to pay 10s. seven years ago. To use Lord Justice Romere's language in Giblin *v.* National Amalgamated Laborers' Union (72 L. J. K. B., p. 914—1903, 2 K. B. at p. 620), 'The conduct of the defendant is morally an unjustifiable molestation of the man. * * * An improper and inexcusable interference with the man's ordinary rights of citizenship.' But these rights have been cut away and the remedy for them destroyed by the legislature."

On appeal the House of Lords held that there was not a trade dispute in this case, because the defendant Wade was not authorized to act by the union, but the Low Lords signified their assent to the conclusion that had he been acting under the direction of the union there would have been no liability for procuring the malicious discharge of the plaintiff in furtherance of the trade dispute. I submit to the committee that it is unthinkable that the American Congress could ever accept as precedent for its legislation a law which gave to either an individual or a combination the right to maliciously procure, without civil responsibility, the discharge and prevent the future employment of a workman because of his refusal to meet the improper demands of any individual or collection of individuals. This very bill before you seeks that end. It undertakes to provide in the second section that no act of two or more persons done in furtherance of a trade dispute shall make the parties criminally or civilly liable in order to protect such combinations from criminal or tort liability.

The CHAIRMAN. I do not desire to interfere with the line of your argument, but as I understand you, you say that the workmen have the right to strike?

Mr. EMERY. Yes.

The CHAIRMAN. Then do you go further and say that those striking workmen have the right to picket; it is not contrary to law to picket?

Mr. EMERY. In any State in which there is no statute on the subject.

The CHAIRMAN. Not unless there is some State statute?

Mr. EMERY. If individuals without the menace of numbers go to a place where a strike is on merely for the purpose of obtaining information or peaceable communication with others, that is not unlawful.

The CHAIRMAN. It is a legal term, is it not, used in law books, "picketing" or "to picket"?

Mr. EMERY. But "picketing" has been given a variety of meanings. When indulged in by numbers that fact constitutes a menace frequently held illegal.

The CHAIRMAN. We understand "picketing" to mean that here are strikers and can they not persuade other people; to go where other people may be seeking to take the place of the strikers?

Mr. EMERY. Yes.

The CHAIRMAN. Without going upon the premises of the mill or factory, can they not in a peaceable way try to persuade other people not to accept the employment that the strikers have abandoned? That is not contrary to law, is it?

Mr. EMERY. Those things are qualified by a great many circumstances, Mr. Chairman, upon which the legality depends.

The CHAIRMAN. I said "peaceable" and "peaceful" and without any force.

Mr. EMERY. Yes. There arises in my mind a case within my personal experience occurring in California a few years ago where picketing was enjoined. It was the case of Pierce *v.* The Stablemen's Union, which afterwards went to the Supreme Court of the State of California and was sustained. In that case a livery stable was picketed during the course of a stablemen's strike, and during the hearing on the application for the injunction the captain of pickets testified on cross-examination that he had from 40 to 120 men constituting his picket line and patrolling up and down in front of the stable. The stable had a frontage of perhaps 75 feet on one of the principal streets of the city. The court held in that case, and very properly, that the picketing under the circumstances disclosed amounted to an obstruction of the street and the prevention of reasonable access to and from the stable being carried on under circumstances that intimidated not only those who remained at work or sought employment, but the actual and potential patrons of the stable. So you perceive that one definition of picketing may vary greatly from another.

The CHAIRMAN. Suppose there were a thousand men on strike from one establishment and 10 of the strikers should be in the neighborhood of that factory or establishment, but not on the premises themselves, and they should proceed in a perfectly peaceful way without overawing the people who appeared to be going to take the place of strikers, and without using any threats or violence, just simply saying to them: "We wish you would not take our places; we are striking for an increase in wages"; or "We are striking for some other good reasons and we wish you would not go and take our places." There is nothing unlawful in that, is there?

Mr. EMERY. No, sir; not as you state it.

The CHAIRMAN. Have there not been cases where judges have issued injunctions and cited men for doing that very sort of thing?

Mr. EMERY. I do not know of an instance, Mr. Chairman. If you will show me one I should like to see it.

The CHAIRMAN. I am asking you for information.

Mr. EMERY. No, sir; I do not know of an injunction predicated upon the conditions you describe. You refer to cases in which injunctions have been issued?

The CHAIRMAN. I am seeking for information and I am just putting that as an illustration.

Mr. EMERY. Each of these cases has its special circumstance and of course the remedy in equity accommodates itself to the peculiar characteristics of each case.

The CHAIRMAN. Of course, we understand that.

Mr. EMERY. Practically every case presents different circumstances.

The CHAIRMAN. But it is an abuse in some cases—a possible abuse I might say—that has given rise to complaint?

Mr. EMERY. Have you a case in mind, Mr. Chairman?

The CHAIRMAN. No; I have not myself, because I live entirely in an agricultural community where we do not have strikes and lockouts.

Mr. EMERY. Perhaps you have had them on your railroads, Mr. Chairman?

The CHAIRMAN. No; I do not remember in my section of ever having any railroad strikes.

Mr. EMERY. I recall some two years ago a very serious strike on the Central Railroad of Georgia, caused, I believe, by the system of promoting negro firemen.

The CHAIRMAN. That was in Georgia. I do not believe that condition ever obtained in my section.

Mr. THOMAS. Have you any objection to men charged with contempt being tried by a jury?

Mr. EMERY. I discussed that question at some length and should dislike to further inflict myself upon the committee in regard to it.

Mr. THOMAS. I did not happen to be present when you discussed it.

Mr. EMERY. Pardon me. I do oppose trial by a jury in contempt cases.

Mr. THOMAS. Then you think a man charged with contempt does not have the same right that a man charged with murder has? He can be tried by a jury.

Mr. EMERY. Yes, sir. There is no parallel between the cases.

Mr. THOMAS. You consider disobedience to a Federal injunction a graver charge than murder, do you?

Mr. EMERY. That is not implied. I think the Constitution of my country has provided two modes of procedure in the cases stated.

Mr. THOMAS. Is there any provision in the Constitution to the effect that a man tried for contempt may not be tried by a jury?

Mr. EMERY. I think that is the effect of a provision.

Mr. THOMAS. What is it?

Mr. EMERY. It is the well-known provision which extends the judicial power to all cases in law and equity.

Mr. THOMAS. In what way?

Mr. EMERY. If the gentleman will permit me, it would be very difficult to undertake a proper discussion of the issue which your inquiry raises under the circumstances of this hearing. I have fully expressed myself on that subject in an argument made before this committee.

While I desire to fully respond to the gentleman's inquiry, it is impossible to adequately do so at this time.

Mr. THOMAS. What you have said will be printed?

Mr. EMERY. Yes.

Mr. THOMAS. Then I will read it.

Mr. EMERY. It has been printed.

The CHAIRMAN. Then you think that in no case have Federal judges in labor disputes abused the process of injunction?

Mr. EMERY. Do you mean by the word "abused," Mr. Chairman, made error in the issuance of a writ?

The CHAIRMAN. I mean more than that, that they have issued an injunction where they should not have issued it, and that they have done things under the injunction process that they ought not to have done.

Mr. EMERY. I must answer, Mr. Chairman, that I have examined every case I have heard criticized, but I know of none which sustains the charge that any Federal judge has abused his power.

No doubt Judge Jenkins made an error in issuing the injunction in the case of the Farmers' Loan & Trust Co. *v.* The Central Pacific Railroad, which Mr. Justice Harlan corrected in the decision in Arthur *v.* Oakes; but in that case no one can read the elaborate and learned opinion of Judge Jenkins without being impressed with his sincerity and sense of responsibility. His decision involved the rights of a receiver through whom the court was operating a carrier, and he was confronted with the then doubtful question of how far the court could go in protecting property under its control. It is possible, although I think it most infrequent, that there are cases in which errors have been made and fully corrected on appeal, but I know of no case, if one exists, where it may be said that a judge issuing an injunction has abused his power.

But, sir, if it were true that this committee had before it several instances of judicial error in the issuance of injunctions, that would no more justify depriving the Federal judiciary of the power to continue to issue them in labor disputes and give the requisite constitutional protection to civil and property rights there assailed than it would justify legislation depriving judges of their power to issue injunctive or other writs in other forms of litigation because error had been committed in granting them. Judges are but human and subject to the frailties of the intellect, which we recognize by providing courts of appeal. I know of no case, nor have I ever heard one presented, which justified the charge that one, much less many, Federal judges have misused their power to issue injunctions in trade disputes, and I am anxious to have any member of this committee, or any one present, cite a case which sustains the charges made.

The CHAIRMAN. I am sorry that we can not give you more time, Mr. Emery.

Mr. EMERY. Relying on the permission of the committee, I beg now to revert to the English legislation upon which we are informed the second section of this bill is predicated. I have endeavored to give you a brief résumé of the circumstances which led to the present English legislation, and I have undertaken to briefly indicate the character and consequence of the recent legislative privilege conferred upon English trade unions. Their funds, I have said, were under the trade disputes act of 1906 relieved from tort liability for the acts of their agents when done in furtherance of a trade dispute; but these peculiar and special privileges which, as the English courts have pointed out, place them in a position of legal superiority to all their fellow subjects, are granted by a Parliament without constitutional restraint, a Parliament which can not only confer special exemptions from the law upon any class in the community but upon any individual, and which can, and has many times in the past, placed disabilities upon individuals or classes of the King's subjects because of their industrial position, their religious belief, or any other reason that seemed good to the Parliament.

Mr. Bryce has very strikingly described the arbitrary powers of Parliament in the American Commonwealth, volume 1, page 32:

"The British Parliament has always been, was then, and remains now a sovereign and constituent assembly. It can make and unmake any law, change the form of government or the succession to the Crown, interfere with the courts of justice, and extinguish the most sacred and private rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers reside in it, just as if the whole nation were present within the chamber where it sits. In point of legal theory it is the nation, being the historical successor of the folkmoot of our Teutonic forefathers. Both practically and legally it is to-day the only and sufficient depository of the authority of the nation, and is, therefore, within the sphere of law irresponsible and omnipotent."

So says the same author at another point:

"What are called in England constitutional statutes, such as Magna Charta, the Bill of Rights, the act of settlement, the acts of union with Scotland and Ireland, are merely ordinary laws, which could be repealed by Parliament at any moment in exactly the same way it can repeal the highway act or lower the duty on tobacco. * * * Parliament can abolish when it pleases any institution of the country, the Crown, the House of Lords, the established church, the House of Commons, Parliament itself." (Vol. 1, pp. 237–238.)

In the course of his dissenting opinion in the case of Robertson *v.* Baldwin (165 U. S.) Mr. Justice Harlan refers to these "profound differences between the American and so-called British constitution," and points out—

"No such powers have been given to or can be exercised by any legislative body organized under the American system. Absolute arbitrary power exists nowhere in this free land. The authority for the exercise of power by the Congress of the United States must be found in the Constitution. Whatever it does in excess of the powers granted to it, or in violation of the injunction of the supreme law of the land, is a nullity and may be so treated by every person. * * * If the Parliament of Great Britain, her Britannic Majesty assenting, should establish slavery or involuntary servitude, the courts would not question its authority to do so, and would have no alternative except to sustain legislation of that character. A very short act of Parliament would suffice to destroy all the guaranties of life, liberty, and property now enjoyed by Englishmen."

Even the proponents of this legislation must realize what would happen if Congress possessed and exercised the powers of the British Parliament, which this bill endeavors to excite into being. The very constitutional restrictions which they seek to overcome, and which they would have you disregard, are those which create the most marked distinction between American and British Governments, and give to the citizens of the one a security not possessed by the subjects of the other. Within the memory of living men these very comparisons have been exemplified. Our Constitution forbids the passage of bills of attainder. Following the War of the Rebellion the Supreme Court of the United States was again and again called upon to protect the citizens of the States lately in rebellion against legislation amounting to acts of attainder growing out of the bitterness of the civil struggle. The British Parliament has passed, and may to this hour pass, bills of attainder, punishing unborn children for the alleged acts of their parents. Our Constitution guarantees a speedy trial to persons accused of crime. The Parliament may, and frequently has, authorized or permitted the indefinite imprisonment of individuals without trial, or even an accusation, and upon the mere suspicion of the executive. We forbid the taking of property without due process of law. The Parliament has and does arbitrarily confiscate private property without compensation. It is not within your power to pass ex post facto laws, but within your own memory certain Irish Parliamentary leaders were prosecuted, convicted, and imprisoned for making speeches made unlawful by act of Parliament after their delivery.

So, gentlemen of the committee, while it is true that English trade-unions enjoy special exemptions from the uniform operation of the law which it would not be possible to grant to members of trade-unions in this country without depriving other workmen who are not members of such organizations and other citizens generally of the equal protection of the law, it is equally true that the English legislation has grown out of special legal disabilities unknown to the American workmen and unusual circumstances of fact without parallel in this country.

But the legal privileges to which I referred are accompanied by legal disabilities which no trade-unionist of this country would care to accept. The British trade unions may not hold property, nor act through trustees, except it be registered under the trade-union act of 1871, and it has been frequently decided that that act is, as it were, the charter of combination for a registered trade union, and it can exercise no power not therein authorized. In this country a labor union is not required to incorporate or even assume any quasi corporate form. It remains a purely voluntary organization that may enforce any lawful rule upon its members, and it enjoys the fullest and freest rights of political activity. In Great Britain it was not long since decided in the case of the Amalgamated Society of Railroad Servants *v.* Osborne (House of Lords, July 21, 23, 28; Dec. 21, 1909) that a registered trade union can not lawfully apply its funds for the maintenance of members of Parliament to represent its interests. As a corollary to that judgment it was held in a very recent case (Wilson *v.* Amalgamated Society of Engineers, 2d Ch., Mar. 24, 1911) that as a trade union has no power to levy contributions upon its members for the purpose of securing parliamentary representation, they have, for like reasons, no power to levy contributions to secure representation on municipal and other local bodies other than boards of guardians. That is where the levy on the members is in effect compulsory. This decision, in express terms, leaves it an open question whether the Osborne case does not apply even to the administration of funds for parliamentary and municipal elections where the money is voluntarily subscribed by members of the union.

The point of all these comparisons between the legal conditions under which the British and American labor unions operate is that the legislative privileges conferred by the British Parliament upon British trade-unions are accompanied by legal and political disabilities which no American trade-union would accept. Yet the mode of argument adopted by the opponents of this legislation is to single out an exemption from the general law, conferred upon the British trade-unions, which it is not within the power of the American Congress to confer upon the members of the labor organizations in this country, without mentioning to the committee the various attendant disabilities accompanying these privileges and interwoven with them as a part of the complete legal system of trade-union regulation, the acceptance of which as a standard of legal right in this country no labor-union leader would dare to advocate in the presence of his own followers.

Let me now ask the committee to note the nature and circumstances of the equity jurisdiction exercised in labor disputes, observing that the rights protected are of the same character as those which are the object of remedial intervention by equity in every other known form of legal controversy; that, far from being a novel exercise of the powers of the chancellor, the principles involved are as ancient as any known to equity jurisprudence, nor do they protect merely the rights of employers, but they do, and in almost every instance of their exercise are required to, protect the equal rights and privileges of employees. Indeed, with respect to this last point I may observe in passing that two of the most prominent cases governing the use of injunctions in labor disputes are those of Plant *v.* Woods (176 Mass., 492) and Pickett *v.* Walsh (192 Mass., 572). In the first case one labor union is seeking protection from the intimidating and coercive action of another labor union which questioned and orthodoxy of the first; and in the second case individual nonunion men are seeking to be protected in their right to continue their employment against the efforts of a bricklayers' union to cause their employer to discharge them unless they join the defendant union.

Now, what the the rights for which injunctive protection is sought in the course of labor controversies? Let me refer for description to the language of Judge Gray in the famous report of the Anthracite Coal Strike Commission: "The right and liberty to pursue a lawful calling and to lead a peaceable life, free from molestation or attack, concerns the comfort and happiness of all men, and the denial of them means the destruction of one of the greatest, if not the greatest, of the benefits which the social organization confers."

Man's property in himself is the first and most elemental of all property rights, a fact this Nation recognized in the noblest manner by the emancipation of the slave. But a man owns the labor of his head no less than that of his hand; of his pen no less than his pick; his professional learning no less than his knowledge of a trade. Every exercise of mind or body possessing value is property as much as the coat on my back or the watch in my pocket, the house in which I live, or the land whose fruits sustain my life. Nay, more, we dispose of what we have and buy the possessions of others only through agreement; thus the most commonplace, and, indeed, socially, the most indispensable, of all property rights is that of contract. These rights of property are universally recognized, not more by the technical decisions of generations of judges than by the common sense of mankind. So it is evident by our daily experience, apparent in our customs, embodied in our law, confirmed by our courts, and the practical judgment of civilized mankind, of which we are a part, that not only are land and chattels property but the rights by which we acquire and dispose of them, use them for our own profit and our neighbor's benefits, as well as the peculiar qualities and powers of mind and body that may be turned to our pecuniary advantage—all are alike property and entitled to protection as such from whatever source they may be assailed.

Whenever we use land and structures in commerce and industry, whenever we exercise personal rights in connection with them and seek to acquire a name for skill in manufacture, honesty and enterprise in trading, that custom may accrue to us, that esteem which we secure in the minds of others because of the quality of our product, the character of our skill, the promptness with which we pay our debts, and those circumstances and incidents that contribute to give us reputation in the judgment of the buying public is a property right as valuable as store and factory and skill themselves, and we term it the good will of business.

All these circumstances in action constitute a going business, a thing in action of the most valuable nature, which has been thus graphically described by a great court of New Jersey:

"Business does not mean stock or machinery or capital and the like. While 'business' can be done without these, in commercial language it is as distinct from it as labor is from capital. In speaking of the business that may be done by a merchant, banker, or railroad company, the mind does not contemplate or dwell upon the character or quality of the means used, but of the operation, whether great or small, complex or simple, numerous or few, for one or the other of these conditions may arise from much or little stock or capital. In other words, 'business' does not mean dry goods, nor cash, nor iron rails and coaches. Business is not those lifeless and dead things but the activities in which they are employed. When in motion, then one is said to be in business; and then it is that merchants and others speak of the profits of business."

The importance of the right to do business was splendidly emphasized by the Hon W. G. BRANTLEY, a distinguished Democratic Member of the present House and former member of this committee, in a report made from the Judiciary Committee of the House on personal and property rights during the Fifty-ninth Congress. Mr. BRANTLEY said:

"It is well-nigh impossible, to my mind, to separate the right to do business from the business itself. It takes both to make a business. Financial loss, and perhaps bankruptcy and ruin, awaits every man who is denied the right to carry on the business in which his capital is invested."

The Wilson, Dingley, and Payne Tariff Acts each, in some of their provisions, recognize business as distinct from its tangible assets; so, too, the Sherman Act recognizes it by giving treble damages against violators of the act for injury done to business. So, too, you will find frequently cases in the Federal courts where ticket brokers have been enjoined from "scalping" railroad tickets on the ground that such conduct endangers the business of the railroad company by the interferences of these brokers or scalpers between the carrier and the original purchaser of the ticket, who is under contract not to resell it. This whole doctrine of restraint by injunction directed against third parties maliciously interfering with a business contract is fully set forth in a celebrated decision of the Supreme Court, Bitterman *v.* L. & N. Railroad (207 U. S., 222), and the committee will observe that the principle of law laid down there is the very one underlying and vindicating the interference of a court of equity in a labor dispute where there is a combination or conspiracy to procure or compel a breach of contract.

Now, all of these rights to which I refer are daily receiving equitable protection in every department of commercial litigation. Trademarks, copyrights, trade names, unfair competition, betrayal of trade secrets, nuisances affecting the use of property, the protection of trust funds against dissipation, injunctions against waste, all sorts of rights, accorded by contract; these and many uses of property and the exercise of property rights too numerous to mention are the commonplaces of daily protection by injunctive remedy predicated upon the recognition of the great truth that in the commercial world the right of greatest value and necessity is the right to carry on a lawful business without unlawful interruption. It is only when these same rights are menaced in labor disputes that their protection excites any criticism or seems to cause any confusion of mind amongst labor leaders or legislators.

True it is that wherever the injunctive writ is sought the applicant must disclose and the court must find, a condition of fact in which the rights to be protected are so circumstanced that unless the writ issues, the irreparable damage will be done and there is no adequate remedy at law. "But," says the proponents of this legislation, "if the criminal law be enforced in labor disputes against those acts which are said to frequently accompany disturbances of this nature, a remedy is at hand." In response to that it might first be observed that the second section of the proposed bill removes the most common acts and conspiracies in furtherance of trade disputes, from the reach of the criminal law. But even if the criminal law be left in its present form, I have never heard it seriously contended, nor do I know of any decision or any textbook which holds the enforcement of the criminal law to be an adequate remedy for a person injured as against the wrongdoer. To fine, imprison, or execute a criminal satisfies the outrage done to the community, but it never has been known to compensate the individual against whom the act is directed.

But the proponents of this bill further say that the wrongdoers may respond in damages; there is a remedy. It has always been held that where many individuals join in the commission of a wrong requiring a multiplicity of actions to recover compensation, and where even in that event many remain unknown or financially irresponsible, it can not be said that the remedy at law is adequate; and if it is not, the damage accomplished is certainly irreparable.

But finally let us assume the ordinary circumstances of an average strike, accompanied by picketing and boycotting, hour after hour and day after day, taking any of the numerous cases in Federal and State decisions as an example. We may find workmen intimidated going to and from work, customers threatened with boycott if they continue to deal with an individual against whom the strike is directed; and not only are the parties to the combination effectuating these things severally irresponsible, and often unidentifiable, but the wrongs they commit are multiplied each hour and each day, so that the injury and damage inflicted is of a continuing nature which a thousand suits at law, if they were maintainable, could no more adequately redress than an action directed against a cyclone or a thunderbolt. To these practical circumstances no man of ordinary experience can blind his vision. Thus it will be evident from an examination of any one of the adjudicated cases involving a labor dispute that there is frequently a combination of circumstances working injury in a thousand forms, for which civil actions in tort are as inadequate as an action against a mob.

You are told that innocent acts are frequently enjoined, but the "innocent acts" are always described without reference to the circumstance of their employment. "No conduct," said Mr. Justice Holmes, in Aikens *v.* Wisconsin (195 U. S.), "has such absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to protect the punishment of the plot by law."

So the charge of enjoining innocent acts is always made without reference to the injunctive order in which they are alleged to have been restrained; or the order is presented and a phrase is taken here and there from its context and the charge pressed home by a superficial or fragmentary reading of particular injunctions. Thus I have noticed caustic criticisms of an order enjoining men from marching on the public highway, the critic making no reference to the fact that the defendants were so enjoined only if their purpose was to prevent other workmen equally entitled to the use of the highway from going to or returning from their work. It is frequently asserted that men are enjoined from "persuading" others to do or omit to do certain things, but I know of no order in which such a term is used except in connection with other phrases forbidding conduct of an unlawful character. Surely no rule of interpretation is better settled than that where a number of phrases are used, the concluding word of many terms is to be given construction as of the same general class as the previous phrases. Thus the word "persuasion" is sometimes used as a general inhibition of the kind of persuasion previously prohibited in a writ.

So, too, you are informed that injunctions are issued against acts which are crimes in order that through proceedings in contempt the persons committing such acts may be deprived of trial by jury. This charge, pressed with much plausibility, fades before the simple and easily made distinction between the various qualities present in every human act. The meanest man has no difficulty in realizing, for illustration, that every act of man has both a moral and a mental quality. The same act may conform to the laws of logic and violate the laws of morals. So, too, any act of one human being may, like a trespass, for instance, be at once the subject of criminal prosecution and a simultaneous civil action for damages. He who assaults another may be punished by the State for his crime and sued by the object of his wrongdoing for his tort. So an act forbidden by injunction may, when viewed through the spectacles of criminal law, likewise constitute a crime.

Said Mr. Justice Brewer in the Debs case (158 U. S., 595):

"The law is full of instances in which the same act may give rise to a civil action and a criminal action. An assault with intent to kill may be punished criminally under an indictment therefor or will support a civil action for damages, and the same is true of all other offenses which cause injury to persons or property. In such cases the jurisdiction of the civil court is invoked, not to enforce the criminal law and punish the wrongdoer, but to compensate the injured party for the damages which he or his property has suffered, and it is no defense to the civil action that the same act by the defendant exposes him also to indictment and punishment in a court of criminal jurisdiction. So here the acts of a defendant may or may not have been violations of the criminal law. If they were, that matter was for inquiry in other proceedings. The complaint made against them in this is of disobedience to an order of a civil court made for the protection of property and the security of rights. If any criminal prosecution be brought against them for the criminal offense alleged in the bill of complaint of derailing and wrecking engines and trains, assaulting and disabling employees of the railroad companies, it will be no defense to such prosecution that they disobeyed the orders of injunction served upon them and have been punished for such disobedience.

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"In brief, a court enforcing obedience to its orders by proceedings for contempt is not exacting the criminal laws of the land but only securing to suitors the rights which it has adjudged them entitled to."

In the face of the demands made upon it, I beg this committee to ask, What is there in the nature of a labor dispute that should remove the persons and the rights involved from the same protection, the same remedies, the same constitutional guaranties that operate upon the same citizens in every other controversy? Is it that the right to a preventive remedy is in any sense inferior to the right to a compensatory remedy? Is the deterrence of wrong less important than its cure? The same great organic instrument of government confers jurisdiction in law and equity to the same court, in the same place, at the same time, and for the same purpose. The constitutional right to equitable remedies and procedure is equal in every respect to the right which each citizen possesses to the protection of a court of law. It is no less; it can be no more; nor can the right of any citizen be different from that of another citizen in similar circumstances; nor can a remedy be made to depend upon the character of the controversy and not upon the nature of the right assailed.

These propositions are self-evident. In this day and place they can require no elaboration of authority. I wish, therefore, to call to the attention of the committee but two cases on the general proposition of the right and duty of a court of equity to supply in labor disputes the protection which this legislation would destroy. The universal agreement of judicial authority on the points at issue is well stated in the case of Union Pacific R. R. Co. *v.* Ruef (120 Fed. Rep., 102), in which the court says:

"I have cited these authorities as being in part those which sustain the authority and duty to issue writs of injunction against violence to persons, against violence to property, against interference to business, against intimidation, and against the rights of contract and liberty. These authorities can not be reviewed within the limits of an opinion

of reasonable length. The rules to be deduced, with but a single exception, can not be in doubt, and the authorities are not in conflict, and it does not matter whether we turn to the English cases or the Federal cases decided on the circuit, to the decision of the appellate courts of the United States, to the supreme courts of the several States, or to the textbooks, old or modern, we find a uniformity so remarkable as seldom to be found in other branches of our jurisprudence.

"They are all in favor of the rights of contract, of freedom, of the rights of property, and that no combination of men shall be allowed to interfere with another man, partnership, or corporation. The courts can not hope to entirely foreclose discussion of these questions, but discussion is already nearly at an end by the courts, and by those having the slightest knowledge of jurisprudence. And capitalists and employers of labor, and employees alike, must understand that they must go elsewhere than to the courts for other results, and if they can not go with confidence to the courts, it is because they desire to go without conscience, and knowing that they have a controversy without merit."

If the members of the committee would glance at the same rule of law applying to the boycott by a combination of employers and the boycott by a combination of workmen, let them examine the cases of Montague *v.* Lowry (193 U. S., 38) for the former and Lowee *v.* Lawler (208 U. S., 206) for the latter. And the committee will find, perhaps, much to its interest, that the counsel for the boycotting employers makes, in his brief, the same vain argument to the Supreme Court which underlies the second section of this bill; that is, that whatever one man has a lawful right to do a combination ought likewise to have a legal right to agree to do.

Finally, as the last expression upon the subject, we have the utterance of the Supreme Court of the United States in the case of Gompers *v.* Buck Stove & Range Co. (219 U. S.), where the court, fully recognizing the right of men to organize and act collectively, fully vindicates the right and duty of a court of equity to protect an individual in the lawful exercise of his rights against the coercion of a powerful labor combination.

In that decision, in which all the members of the court concurred, Mr. Justice Lamar says:

"The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained. * * *

"Society itself is an organization and does not object to organizations for social, religious, business, and all legal purposes. The law therefore recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, influence, and power that come from such association. By virtue of this right, powerful labor unions have been organized.

"But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which an individual may be helpless. This power when unlawfully used against one can not be met except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution, or by standing on such rights and appealing to the preventative powers of a court of equity. When such appeal is made it is the duty of government to protect the one against the many, as well as the many against the one."

As the committee may be interested in examining the leading cases involving these propositions, I supply a list for their convenience:

Quinn *v.* Leatham, 1st Appeal Cases, 1901, 495.
Casey *v.* Typographical Union, 45 Fed., 135.
Toledo & Ann Arbor R. R. Co. *v.* Pennsylvania R. R. Co., 54 Fed., 730.
Thomas *v.* Railroad Co., 62 Fed., 803.
Arthur *v.* Oakes, 63 Fed., 319.
Loewe *v.* California State Federation of Labor, 139 Fed., 83; also 189 Fed., 714.
In re Debs, 158 U. S., 564.
Bitterman *v.* L. & N. R. R., 207 U. S., 206.
Board of Trade *v.* Christie, 198 U. S., 236.
Loewe *v.* Lawler, 208 U. S., 206.
Gompers *v.* Bucks Stove & Range Co., 219 U. S., 340.
State *v.* Stewart, 59 Vt., 274.
State *v.* Glidden, 55 Conn., 46.
Hawarden *v.* Coal Co., 111 Wis., 545.
Jackson *v.* Stanfield, 137 Ind., 592.
Delz *v.* Winfree, Norman & Pierson, 80 Tex., 401.
Gray *v.* Building Trades Council, 91 Minn., 171.
Beck *v.* Teamsters' Union, 188 Mich., 545.
Pratt Food Co. *v.* Bird, 148 Mich., 632.
Purvis *v.* Brotherhood, 214 Penn., 348.
Doremus *v.* Hennessey, 176 Ill., 608.
Pickett *v.* Walsh, 192 Mass., 572.
Barr *v.* Essex Trade Council, 53 N. J. Eq., 101.
Crump *v.* Commonwealth, 84 Va., 927.
Lohse Co. *v.* Fuelle, 215 Mo., 421.

Since the purpose of this measure is not merely to deprive Federal courts of the power of equitable intervention in trade disputes, but likewise to change the rule of the criminal law with respect to conspiracies and combinations acting in furtherance of such disputes, I ask this committee to recall that the criminal condemnation of the boycott was secured from the Supreme Court of the United States by labor organizations themselves. In 1887 several members of the musicians' union, then affiliated with the Knights of Labor, all being residents of this city, refused or neglected to pay a fine levied against them by the Musicians' Union. They were expelled from the union. Notice was served upon them that no member of the organization would work in any orchestra in which they were employed, and through the Knights of Labor this determination was sent over the country, and every theatrical manager and orchestra leader was informed that the employment of these men in any capacity would precipitate a strike. So complete was the combination against them that they were unable to secure work, whereupon they complained to the district attorney of this city against certain persons who had been chiefly instrumental in putting this terrible combination into operation against them, and the parties accused were indicted on a charge of conspiracy. The indictment shows that the combination not only undertook to prevent them from securing work as musicians, but from securing employment in any capacity whatever.

The defendants were tried in the police court of this city without a jury and found guilty, whereupon Mr. Jackson H. Ralston, now counsel for Messrs. Gompers, Mitchell, and Morrison, applied to the Supreme Court of the United States for a writ of habeas corpus on behalf of Callam, one of the defendants then in the custody of the marshal, on the ground that the offense with which the defendant was charged was of so "heinous" a character that he was constitutionally entitled to a trial by jury.

Mr. Justice Harlan, in an elaborate opinion, concurred in by all his colleagues, held the point well taken and declared that the conspiracy of which the defendant was a party, to wit, a boycott directed against the employment of certain individuals, was an offense of so "heinous" a character that the defendant was entitled to a trial by jury. (Callam *v.* Wilson, 127 U. S., 540.)

Now, sirs, in conclusion, what is the purpose of this remarkable legislative proposal? No man can be familiar with contemporary events, nor with the trend of judicial decisions and statute law, without realizing that this is a deliberate effort to legalize combinations and conspiracies of a kind condemned, not only by the decisions of every State court of last resort, of every Federal court, of the Supreme Court of the United States, but likewise by the moral judgment of mankind.

At one stroke this measure would deprive the victim of the boycott, whether employer or employee, of the protection of the courts of law and equity and the criminal statutes which even now, in many instances, fail to effectually shield either the business man or the laborer from persecution and grievous injury and injustice. It is intended, and would, were it constitutional, validate the various assaults upon personal liberty and private property so eloquently and powerfully described in the report of Anthracite Coal Strike Commission, composed of both employers and representatives of organized labor:

"It becomes," said that body, "our duty to condemn another less violent, but not less reprehensible form of attack upon those rights and liberties of the citizens which the public opinion of civilized countries recognizes and protects. The right and liberty to pursue a lawful calling, and to lead a peaceable life, free from molestation or attack, concerns the comfort and happiness of all men, and the denial of them means destruction of one of the greatest, if not the greatest, of the benefits which the social organization confers. What is popularly known as the boycott (a word of evil omen and unhappy origin) is a form of coercion by which a combination of many persons seek to work their will upon a single person, or upon a few persons, by compelling others to abstain from social or beneficial business intercourse with such person or persons."

The rights of 30,000,000 wage earners, seeking to earn their living under the conditions that please them best, are to be subjected to the coercion of 2,000,000 of their fellows, demanding that membership in the organizations which they control shall be a prerequisite to the exercise of the right to work without molestation or persecution. Thousands of employers engaged in every form of commerce and industry are to be left without legal remedy whenever they become the objects of attack, upon refusal to grant the demands of combinations possessing, in furtherance of trade disputes, the peculiar privileges to commit crime without punishment and damage without liability, which this measure promises. The power to issue injunctions, to protect personal liberty and property rights, is to be withdrawn from the courts of the United States and practically lodged in a labor federation issuing its own injunctions against employer and workmen, requiring them to conduct their business and earn their livelihood under conditions which the federation demands, and contempt of such orders is to be punished through the coercive influence of the combination, operating through its agents in every State in the Union and in every great city of those States.

The will of such a combination, unrestrained by legal remedy, civil liability or criminal responsibility, is to succeed the law of the land, and great combinations and conspiracies which have hitherto obstructed the movement of commerce or undertaken to fix the conditions of production and employment only to be met by the protecting shield of the law, or to find it withdrawn from the form of their victim. The public, no less than the private interests, would be at the mercy of such privileged assailants. The very States of the Union, impotent to obstruct interstate commerce, would find themselves inferior in power to mere voluntary associations of individuals promulgating, without restraint, rules for the conduct of interstate commerce which no sovereign State could issue. And such privileges are demanded at the very hour when the public mind has been amazed and shocked by an astounding confession that has revealed a vast labor combination operating in many States, and through many agents, and using the highest forms of physical force that modern science can place at the command of man for the purpose of compelling a great industry to conduct its operations under conditions demanded by that combination, or suffer continuous assaults upon the lives of its workmen and the most destructive attacks upon its property—attacks which, for reckless disregard of the safety of the general public, are probably without parallel in the history of crime.

We ask this committee not merely to reject but to rebuke the demands represented in this legislation. We submit to the committee that the measure is manifestly unconstitutional:

1. Because it undertakes to deprive the courts of the United States of an inherent equity jurisdiction.

2. Because it undertakes to deprive citizens engaged in labor disputes of fundamental, civil, and property rights guaranteed by the Constitution, and which can not be taken from them without a denial of due process of law.

3. Because it undertakes to make constitutional remedies and constitutional rights dependent for their use and protection upon the character of the controversy in which they are involved, and not upon the nature of the right itself.

4. It undertakes to arbitrarily deprive one class of citizens of rights to which they are equally entitled with every other class of citizens.

5. It undertakes in labor disputes to arbitrarily exempt one class of citizens from the uniform operation of the civil and criminal laws of the United States.

6. The English legislation suggested as precedent for this bill is without authority because of profound constitutional differences between the organic laws of Great Britain and the United States, and for the further reason that as a matter of history and fact the British legislation proceeds from special and peculiar circumstances and considerations and is accompanied by inseparable legal disabilities having no counterpart in this country.

Finally, were this measure free from constitutional objection its practical operation would irreparably injure the public and private interest. It would encourage the lawless, breed civil strife and disorder, withdraw protection from the law-abiding and be a lasting stigma upon the legislature which enacted it and the country which endured it.

Mr. CLAYTON. Mr. Speaker, I now yield 30 minutes to the gentleman from West Virginia [Mr. DAVIS].

Mr. DAVIS of West Virginia. Mr. Speaker, the subject the House has under discussion to-day is in no sense a new one. It has been fruitful of discussion and debate in this and other

forums for at least 20 years. It has formed the subject of declarations in party platforms, and not since, but frequently, has been alluded to in presidential messages. I congratulate the Democratic Party that an opportunity has now come to it to present genuine constructive legislation on this mooted topic and that it is prepared to grasp it. [Applause.]

Until I listened to the remarks of the gentleman from Pennsylvania [Mr. MOON], I thought I had some knowledge of both the origin and the history of this measure, some familiarity with its provisions and the reasons for them. I listen always to the remarks of the distinguished gentleman with great respect, and for his judgment I have so high an estimate that I distrust my own whenever I am forced to differ from him. In this instance, however, I do not only differ from his views on this matter, but I draw consolation rather than discouragement from his remarks, and treating them as an epitome of the worst which can be said against the pending bill I am confirmed in my belief in its justice and its equity.

Within the short space of time at my disposal I can not hope to fully cover so broad a subject. I must, therefore, address myself principally to a reply to the suggestions which the gentleman from Pennsylvania [Mr. MOON] has offered in opposition to this bill. The temptation to interrupt him in the course of his remarks was strong, but I refrained because I realized the impossibility of making a connected legal argument under such interruptions, and I must, therefore, claim for myself the same privilege which was justly claimed by him.

The history of government in America, Mr. Speaker, is written in phrases; an idea finds lodgment in the public mind; a wrong burns itself into the national consciousness; an aspiration communicates itself from soul to soul, until the pulse of the Nation is stirred by a common desire; but the wrong is not righted; the idea is not transmuted into action; the aspiration is unrealized until some happy phrase crystallizes public opinion and progress and reform result. So with the phrase "Government by injunction." In themselves the words are meaningless enough, for an injunction is necessarily a form of government; it is the direct exercise of govermental power by the judicial branch, and as such is as legitimate and as necessary as the making of laws by the legislature or their enforcement by the executive.

The legislator enacts the statutes, the executive gives his orders, and the judge, in a proper case, issues his injunction against the parties before him—all alike are necessary functions of government. But as a shiboleth and a slogan, the phrase has come to mean vastly more. It is the expression of a long-standing complaint, which with many has ripened into a deep-seated conviction, that the writ of injunction has been carelessly, if not wrongfully used; that it has been turned to purposes beyond its proper scope; and that an evil has sprung up which calls for legislative action. If, as the gentleman from Pennsylvania [Mr. MOON], in substance asserts, this complaint is the mere clamor of restless lawlessness, if this conviction is the mere prejudice of disappointed litigants, if it is simply the murmur of discontent from those against whom the processes of the law have been rightfully invoked, then we owe it to the country and to ourselves to disregard it and to dismiss the subject as one not calling for our attention. But if the complaint, both in origin and in volume, commands our respect, if instances of abuse in the use of this writ, in fact, exist, we shall fall short of our duty if we fail to discover these abuses and seek to correct them. Nor does it strengthen the argument on the part of the minority to assert that the only purpose of the bill now offered as their substitute and of the presidential messages upon which it purports to be based, is to still this clamor by a mere pretense of remedy.

Those who do not believe that party platforms are mere bait to catch gudgeons must feel themselves bound, no matter upon which side of this House they may sit, to legislate upon this subject. The Democratic Party in its platforms of 1896, 1900, 1904, and 1908 has promised this relief, and in the year 1908 the Republican Party, following as usual the Democratic lead, made a grudging and belated declaration to the same effect. From 1896 to this Congress the Republican Party has enjoyed undisputed control of both Houses of Congress and of the Presidency, and in all that time has put upon the statute books no word of remedial legislation on this matter. Yet I call the gentleman's attention to the fact that it was not in the year 1910, or even in 1909, that this subject was first called to the attention of Congress.

A Republican President, with whose remedies in the matter of court procedure I am fortunately not compelled to agree, called it to the attention of the Congress on the 5th day of December, 1905; on the 3d day of December, 1906; on the 3d day of December, 1907; on the 31st day of January, 1908; on the 25th day of March, 1908; and on the 18th day of December, 1908. His successor, taking a leaf from his book, recommended action in his messages of the 7th day of December, 1909, and of the 6th day of December, 1910. All of these messages fell upon deaf ears. Yet in them, over and over again, it was declared upon the authority of no less a person than the Chief Executive of the United States that these abuses did exist and that Congress should search for and apply the remedy. I have not time to quote in full the substance of any of these messages. A few sentences from some of them may be interesting. In his message of December 3, 1906, President Roosevelt said:

> There must be no hesitation in dealing with disorder. But there must likewise be no such abuse of the injunctive power as is implied in forbidding laboring men to strive for their own betterment in peaceful and lawful ways; nor must the injunction be used merely to aid some big corporation in carrying out schemes for its own aggrandizement. It must be remembered that a preliminary injunction in a labor case, if granted without adequate proof—even when authority can be found to support the conclusions of law on which it is founded—may often settle the dispute between the parties; and, therefore, if improperly granted may do irreparable wrong. Yet there are many judges who assume a matter-of-course granting of a preliminary injunction to be the ordinary and proper judicial disposition of such cases; and there have undoubtedly been flagrant wrongs committed by judges in connection with labor disputes even within the last few years, although I think much less often than in former years. Such judges by their unwise action immensely strengthen the hands of those who are striving entirely to do away with the power of injunction, and therefore such careless use of the injunctive process tends to threaten its very existence, for if the American people ever become convinced that this process is habitually abused, whether in matters affecting labor or in matters affecting corporations, it will be well-nigh impossible to prevent its abolition.

Again, on December 3, 1907, he said:

> Instances of abuse in the granting of injunctions in labor disputes continue to occur, and the resentment in the minds of those who feel that their rights are being invaded and their liberty of action and of speech unwarrantably restrained continues likewise to grow. Much of the attack on the use of the process of injunction is wholly without warrant; but I am constrained to express the belief that for some of it there is warrant. This question is becoming more and more one of prime importance, and unless the courts will themselves deal with it in an effective manner, it is certain ultimately to demand some form of legislative action. It would be most unfortunate for our social welfare if we should permit many honest and law-abiding citizens to feel that they had just cause for regarding our courts with hostility. I earnestly commend to the attention of the Congress this matter, so that some way may be devised which will limit the abuse of injunctions and protect those whose rights from time to time it unwarrantably invades.

On January 31, 1908, he again declared:

> It is all wrong to use the injunction to prevent the entirely proper and legitimate actions of labor organizations in their struggle for industrial betterment, or under the guise of protecting property rights unwarrantably to invade the fundamental rights of the individual. It is futile to concede, as we all do, the right and the necessity of organized effort on the part of the wage earners, and yet by injunctive process to forbid peaceable action to accomplish the lawful objects for which they are organized and upon which their success depends.

While the recommendations made from time to time vary somewhat in detail, I presume no one will dispute that they establish, so far as the word of a President of the United States can establish it, the existence of a well-grounded complaint and the necessity for remedial legislation. It is late now to be told that the whole thing is baseless agitation.

But the gentleman from Pennsylvania [Mr. MOON], says that before the committee which had this bill under consideration there appeared not one man who put his finger upon any specific instance of abuse, and that in all the years in which he has sat as a member of that committee, no such abuse has been called to his attention. I would not in the least impugn either the integrity, intelligence, or industry of the gentleman; but if no such abuse has been called to his attention by others, the books of the law are wide open to him, and in their pages he could have read case after case that would have given him the light he sought. [Applause.] In a matter such as this, I agree that it will not do to content ourselves with general criticisms. We will not better the situation by mere declamation or denunciation; nor must we lose ourselves in the pursuit of academic theories. The thing to do is to go to the cases in which the courts have acted, and where their practice and procedure have failed to meet the standard, put our finger on the specific error and so far as we can, prevent its repetition.

The general principles which should govern courts in the issuance of injunctions have been often stated, but never better so than by Mr. Justice Baldwin, in Bonaparte *v.* Railroad Co. (217 Fed. Cas., 1617), when he said:

> There is no power, the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion or is more dangerous in a doubtful case, than the issuing of an injunction. It is the strong arm of equity, that never ought to be extended, unless in cases of great injury, where courts of law can not afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protective preventive process of injunction; but that will not be awarded in doubtful cases, or new ones not coming within well established principles, for if it issues erroneously an irreparable injury is inflicted, for which there can be no redress, it being the act of a court,

not of the party who prays for it. It will be refused till the court are satisfied that the case before them is of a right about to be destroyed, irreparably injured, or great or lasting injury about to be done by an illegal act. In such a case the court owes it to its own suitors and its own principles to administer the only remedy the law allows to prevent the commission of the act.

With the writ of injunction as so applied and administered there can be and ought to be no complaint. The adjective "beneficent," which has been so often applied to it, is well deserved, for in law as elsewhere, an ounce of prevention is better than a pound of cure; and just in proportion as the value and importance of the writ should be recognized so should its efficiency be safeguarded and its misuse be prevented. I accept the challenge of the gentleman from Pennsylvania [Mr. MOON], and assert that if the testimony of the witnesses before the committee did not disclose them, still the reported cases will show at least five glaring abuses which have crept into the administration of this remedy. I name them:

The issuance of injunctions without notice.
The issuance of injunctions without bond.
The issuance of injunctions without detail.
The issuance of injunctions without parties.
And in trades disputes particularly, the issuance of injunctions against certain well-established and indisputable rights.

These are the evils which this bill seeks to cure.

NOTICE.

Section 263, being the first section of the pending bill, is directed against the issuance of injunctions and restraining orders without notice. Both the majority and the minority of the committee agree with the President, and with the President's predecessor, that this is a practice which should be corrected. All realize alike that when an injunction is issued without notice it virtually deprives the defendant in many cases of his constitutional right to a day in court. The mere issuance of an injunction often achieves the purpose of the suit, and, if continued in force for but a short time, accomplishes all which the plaintiff could have hoped, and effectually destroys the defendant. When such an injunction has fallen, like a bolt from a clear sky, upon the unhappy litigant, punishing him beyond recovery before a hearing can be had, it is no wonder that he feels himself the victim of a rank injustice and that his sense of wrong sometimes blazes into fierce criticism of the courts and deep resentment against all forms of law.

In the earliest Federal legislation on this subject, the judiciary act of March 2, 1793, the necessity for notice upon the issuance of an injunction was recognized. Section 5 of that act was in the following language:

> That writs of ne exeat and of injunction may be granted by any judge of the Supreme Court in cases where they might be granted by the supreme or a circuit court; but no writ of ne exeat shall be granted unless a suit in equity be commenced, and satisfactory proof shall be made to the court or judge granting the same that the defendant designs quickly to depart from the United States; nor shall a writ of injunction be granted to stay proceedings in any court of a State; nor shall such writ be granted in any case without reasonable previous notice to the adverse party or his attorney of the time and place of moving for the same.

So the law remained in substance until the act of June 1, 1872 (17 U. S. Stat., 197), cast it into its present form, as follows:

> That whenever notice is given of a motion for an injunction out of a circuit or district court of the United States, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion. Such order may be granted with or without security, in the discretion of the court or judge: *Provided*, That no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order except within the circuit to which he is allotted, and in causes pending in the circuit to which he is allotted, or in such causes pending outside of the circuit as the parties may in writing stipulate, except in causes where such application can not be heard by the circuit judge of the circuit or the district judge of the district.

An examination will show that, notwithstanding these statutes, the courts in many cases have actually issued temporary injunctions without notice; and in still other cases, although ostensibly complying with the statute, they have issued so-called restraining orders having all the scope and effect of the injunction order itself, and have set down the motion for the injunction to be heard 60 days, 90 days, or even longer, after the issuance of the so-called restraining order. Thus by a mere matter of the use of names they have kept the word of promise to the ear but broken it to the hope, and nullified the entire purpose of the existing law.

I shall not stop to consider the criticisms which are offered upon the accuracy of the résumé of preexisting law contained in the report of the majority; all that is entirely aside from this discussion. All agree upon the evil, and all alike are seeking for some method to remedy it. There are certain minor differences, however, between the first section of the pending bill and the substitute introduced by the gentleman from Pennsylvania [Mr. MOON] and offered by the gentleman from Illinois [Mr. STERLING], but only two points of variance justify consideration. If the substitute offered by the minority should be adopted in its present form, it will, by necessary implication, repeal section 266 of the present Judicial Code, which relates to the issuance of injunctions suspending the enforcement of any statute of a State, and which provides a special procedure adapted to such cases. This section is preserved intact in the bill presented by the committee. The other material difference pointed out with entire candor by the gentleman from Pennsylvania [Mr. MOON], and as to which there is room for legitimate difference of opinion, is that with reference to the duration of a temporary restraining order which may have been issued in a case of emergency without prior notice. The bill provides that such a temporary restraining order must be forthwith entered of record. It can not be carried in the pocket of the litigant until, in his judgment, an opportune time has come to spring the trap which he has set for his adversary. The moment the signature of the court is affixed it must be presented to the clerk and made a matter of public record. Within 7 days thereafter of its own force and effect it terminates, unless, in case of peculiar hardship, the applicant may be able to show to the court good cause for an additional 7 days' extension, or 14 days in all; and if he applies for an additional 7 days, notice of such application must be given to those who have been previously served with the original order. This provision, as the gentleman concedes, complies literally with the message of the President under date of December 7, 1909, as also with the messages of his predecessor under date of March 25, 1908, and December 8, 1908; all of which recommend that the temporary restraining order should terminate within a fixed number of days after its date of issuance. But the substitute provides that instead of terminating within seven days from the date of issuance it shall terminate within seven days from the date of service, and this because it is suggested that it might be difficult, if not impossible, to have service upon the defendant within the original seven days and that he would not be bound by the order until such service had been had. What is the practical effect of such a modification? Suppose instead of 1 defendant there are 20.

The substitute measure does not provide that the order of injunction shall be immediately entered of record; the plaintiff may retain it, as I say, until, in his judgment, an opportune moment has come to spring his trap. Then in his own good time notice is served upon defendant A; some days later, notice is served upon defendant B; later still upon defendant C, and so on in succession upon each. As to each defendant the order is supposed to expire within seven days after its service, and service having been had on defendants on successive days, the temporary restraining order expires like a string of firecrackers exploding as to the defendants, one at a time, in the order of service upon them. This is the inevitable result of the substitute offered by the minority. Of course, inconveniences arising from the necessity for service of process are inseparable from all litigation. A man who can not secure jurisdiction of his adversary by service of process, whether it be summons, subpœna, temporary restraining order, or what not, will be unable to bring him within reach of the power of the court; but, if as suggested, the defendant is deliberately endeavoring to evade service of process in order to escape the effect of the temporary restraining order, it must certainly follow that in so doing he has removed himself from the sphere of immediate mischief and that immediate and irreparable injury from his action is no longer likely to ensue to the plaintiff. In evading the process of the court, he puts it out of his power to commit the injury.

SECURITY.

Section 266a of the bill provides that no restraining order or interlocutory order of injunction shall issue except upon the giving of security conditioned upon the payment of such costs and damages as may be suffered by any party wrongfully enjoined. It is certainly not unfair that he who seeks the extraordinary relief of the writ of injunction should indemnify his adversary, if it proves that he has secured it without right; for it is well settled that in the absence of an express undertaking to that effect, a plaintiff who has wrongfully secured a writ of injunction is liable to the defendant for nothing more than the costs of the suit, and this for the reason that while the injunction is issued at the application of the plaintiff, it is nevertheless in law the act of the court and not of the party seeking it. The only surprising thing is that to this time there has been no Federal statute on this subject. The only statutory reference to the subject of security upon the issuing of injunctions is contained in the act of 1873, and now appearing as section 263 of the Judicial Code, which permits restraining orders to be issued with or without security, as the court may

determine. As long ago as 1723 it was enacted in the then Colony of Maryland that bond should be required in all cases where an injunction was issued to restrain an action at law. This example was followed in the State of Virginia in 1787, in New Jersey in 1799, in New York in 1828, and in 1848 the statutes of the State of New York extended this requirement to all injunctions. In many others, if not in all the States, this example has been followed.

The only objection or criticism now offered to this section of the present bill is that it is utterly unnecessary and conveys an implied reflection upon the courts, since the courts have unanimously met its requirements. Foster on Federal Practice, a standard work, has been quoted by the gentleman with approval, in which I join. I cite it now as an authority to support this particular section and to show that certain of the Federal courts have not met this requirement, but have committed this particular violation of good practice. I read from First Foster's Federal Practice, page 753:

Later the practice (i. e., the practice as to security) "was extended to interlocutory injunctions granted upon notice to the defendant, first in special cases, then generally; and now they" (i. e., bonds) are usually required as a matter of course in England and in most of the United States, although in some of the circuits the Federal judges are accustomed to grant injunctions without such a requirement.

It is to correct that practice in some of the circuits—a practice which I think the gentleman joins us in condemning—that this provision of the bill is inserted.

FORM OF ORDER AND PARTIES.

The next clause of the bill, section 266b, has reference to the form and contents of the order. The complaint has been that the Federal courts have issued writs of injunction without detail and directed them to persons not properly before them. It is asserted again that there are no precedents which justify the enactment of this section; that the Federal courts have always in their injunction orders described the acts forbidden to be done with sufficient detail; and that it wholly ignores the rules of equity of the Supreme Court of the United States, which are alleged to prescribe with great minuteness the form and contents of the injunctive orders and are in conflict with the provisions of the bill. I challenge the gentleman from Pennsylvania [Mr. MOON], as the gentleman from Kentucky [Mr. SHERLEY] challenged him, to point to one word, letter, or syllable in the rules of equity prescribed by the Supreme Court of the United States, 94 in number, which either cover the scope of this section of the bill or are in conflict with it. It can not be that reference is made to rule 21, which provides that where an injunction is desired there must be a special prayer to that effect; nor rule 23, which renders it unnecessary to repeat the prayer for an injunction as a part of the prayer for process; nor rule 55, which in substance repeats the requirements of the statute as to notice on the issuance of injunctions; nor rule 93, which provides for the extension of an injunction order pending an appeal; nor rule 86, which simply declares that it shall no longer be necessary to set out in extenso either the bill or any other pleadings in any order entered by the court. Except this last rule, with the salutary provision which it contains and with which this bill in no sense conflicts, I assert that there is not within the equity rules one single sentence governing or controlling the contents of a writ of injunction.

As to the other stock objection, that the section seeks to correct an abuse which does not exist, I turn again, without stopping to quote other available authorities, to the first volume of Foster's Federal Practice, page 745, and read what will, I think, amply sustain the contention of the majority in this matter:

The writ should contain a concise description of the particular acts or things in respect to which the defendant is enjoined; and should conform to the directions of the order granting the injunction. * * * The defendants ought to be informed, as accurately as the case permits, what they are forbidden to do. It seems that a writ is insufficient which designates the acts sought to be enjoined by a reference to the bill without describing them. When a carrier has been adjudged to have violated the interstate commerce law, the court should only enjoin certain specific violations. An injunction should not be granted—

As a Federal court had done—

commanding the carrier in general terms not to violate the act in the future in any particular. The injunction should not include a direction—

As a Federal court had included—

after specific inhibitions forbidding the defendant to act by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid.

I call upon the personal knowledge and information of every lawyer on this floor to verify the statement that a practice has been indulged in of including in these writs of injunction at the end of a specific and detailed statement of the acts sought to be enjoined, an omnibus or basket clause forbidding all other acts of similar character or referring for further details to the prayer of the bill, in the hope that anything which might have been omitted by the overzealous lawyer would be inserted or corrected by the courts when the time for the punishment of the defendant had arrived. If such an evil exists, and that it does the text which I have read demonstrates, this bill will correct it.

But for the second clause of this section—226b of the bill—the mildest adjective which has been found is that it is "sinister." As one reads it, it seems harmless enough. It says of the writ of injunction or restraining order that—

it shall be binding only on the parties to the suit, their agents, servants, employees, and attorneys or those in active concert with them, and who shall by personal service or otherwise have received actual notice of the same.

I insist, Mr. Speaker, that that language is an exact and accurate declaration of the law, both as it is and as it ought to be. And I further insist that this well-established law has been so ignored as to warrant legislative action. That the courts can act only upon persons who are parties to the suit is certainly a rule which ought to be agreed to as soon as stated. It springs from the basic and fundamental distinction between the judicial and the legislative branches of the Government, which consists primarily in this, that when the legislature acts its mandate, without direct notice or notice of any sort, is binding upon all the community alike. It speaks with a trumpet tone which all must hear and issues a command which all must revere and respect. The judicial branch of the Government, on the other hand, speaks only to those who are before it as parties to the litigation and to whose personal attention the order of the court must in some way be brought; and it has no more right to issue a command directed against the community at large than has the Czar of Russia to promulgate a ukase on American soil. Any violation of this rule is a flagrant transgression of the limit of judicial power.

The principle finds recognition in equity rule 48, prescribed by the Supreme Court of the United States, which is as follows:

Where the parties on either side are very numerous and can not without manifest inconvenience and oppressive delays in the suit be all brought before it, the court, in its discretion, may dispense with making all of them parties and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

It will be said again that no illustrations have been given of the violation of this principle. I think they can be furnished. If the gentleman will turn, for instance, to the case of Chisolm *v.* Caines (121 Fed., 397), he will find a writ of injunction issued by a Federal court in the State of South Carolina, presided over by a judge who has since gone to a well-deserved reward. [Laughter.]

Mr. TOWNSEND. You are aware as to where he has gone?

Mr. DAVIS of West Virginia. It is fair to say that this case is not typical of his judicial actions. Certain gentlemen had leased lands and marshes on the waters of Winyah Bay, in South Carolina, for a hunting and shooting preserve. A controversy arose over the title. An injunction was issued against the contesting claimants and their confederates enjoining them from entering upon the premises and frightening away the game. This injunction pretended to enjoin not only the defendants to the suit, but "all persons whomsoever." Copies of it were posted on the premises, and certain persons, one of whom happened to be a lawyer himself and a trial justice, but in no way associated with the defendants and not even charged to have been in confederacy with them, entered upon the sacred inclosures and shot some of the ducks which were hibernating there. They were punished for contempt of this injunction, although the court frankly stated that there was no charge whatever that they had combined or confederated with the defendants or were in any sense their agents or attorneys. Under any proper construction of the law the injunction was to them as nugatory as if printed in Italian and published in China.

Now, another case. In the case of Scott *v.* Donald (165 U. S., 107) a writ of injunction was applied for before the Circuit Court of the United States for the District of South Carolina in a suit having as its objective point the South Carolina dispensary law. It is interesting to notice that it was granted at the instance of James Donald, who purported to sue in his own behalf and on behalf of all other persons in the State of South Carolina as importers for their own use and consumers of wines, ales, and spirituous liquors, the products of other States and foreign countries. I do not know how many citizens of South Carolina were embraced within that description. [Laughter.]

The defendants, however, were certain parties named who were seeking to enforce the law and "all other persons claiming to act as constables, and all sheriffs, policemen, and other

officers acting or claiming to act under the South Carolina dispensary law." When that injunction was presented to the Supreme Court of the United States it very properly laid down the rule of law contained in this bill. I read from the opinion of the court:

The decree is also objectionable because it enjoins persons not parties to the suit. This is not a case where the defendants named represent those not named. Nor is there alleged any conspiracy between the parties defendant and other unknown parties. The acts complained of are tortious and do not grow out of any common action or agreement between constables and sheriffs of the State of South Carolina. We have, indeed, a right to presume that such officers, though not named in this suit, will, when advised that certain provisions of the act in question have been pronounced unconstitutional by the courts to which the Constitution of the United States refers such questions, voluntarily refrain from enforcing such provisions; but we do not think it comports with well-settled principles of equity procedure to include them in an injunction in a suit in which they were not heard or represented or to subject them to penalties for contempt in disregarding such an injunction. (Fellows *v.* Fellows, 4 John Chan., 25, citing Iveson *v.* Harris, 7 Ves., 257.)

The decree of the court below should therefore be amended by being restricted to the parties named as plaintiff and defendants in the bill, and this is directed to be done, and it is otherwise affirmed.

As an argument against this bill it has been urged that it would have prevented the issuance of the injunction in the famous Debs case. The merest scrutiny of the bill will show that this is not true. The Debs case, which was a suit brought by the United States in its own name to prevent obstruction of the mails and interference with interstate commerce occupied an entirely different field and was in no sense a suit involving the relation of employer and employee; and if the right to an injunction in that particular case is to be affected by legislation, it must be reached by some other method than that adopted in this bill. But I frankly concede that if this bill had been then in force one phrase in the Debs injunction would not have been used, and at least one instance of judicial usurpation would have been prevented. The order in that case was directed against certain defendants, who were named, and others combining and conspiring with them, and then against "all other persons whomsoever." In the use of this last phrase I maintain that the court spoke beyond the limits of its power. As to this a learned writer has said:

It is difficult to see how such injunctions can stand the test of precedent and principle. An injunction issues in a civil suit to any party who has been complained of, at least, and has had notice of the motion of his adversary. To be obliged to wait until the injunction has been violated to determine against whom it was issued ought to be enough to show that it is not an injunction at all, but in the nature of a police proclamation putting the community in general in peril of contempt if the proclamation be disobeyed. Courts of equity were evidently not intended to possess such functions, and it must be regretted that Judge Grosscup, in his most commendable eagerness to offset the criminal inaction of Gov. Altgeld, should have been forced to such a legal anomaly. The power of a court to imprison for contempt of its orders or of the persons of its judges is an arbitrary one at best, and to stretch it as here in the time of disorders and almost panic in the immediate vicinity would seem to show that the court has been deserted by the calm judicial temper which should always characterize its proceedings. (8 Harvard Law Review, p. 228.)

Mr. MOON of Pennsylvania. Is that the opinion of a court?

Mr. DAVIS of West Virginia. It is not. It is an extract from the remarks of a learned commentator with reference to that particular proceeding, and I may say that the Supreme Court of the United States in no part of its decision in that case countenances the part of the order which I have just condemned. It was not brought in issue, for the reason that the party who finally appeared before the Supreme Court was a party named in the injunction and one as to whom this particular question could not arise.

TRADE DISPUTES.

The fourth clause of this bill, section 266c, is divided into two paragraphs. The first provides that in a trades dispute no injunction shall issue unless necessary to prevent irreparable injury to the property or property right of the party making the application, for which there is no adequate remedy at law; and that this property or property right must be described with particularity and the application must be verified. We are told as to this paragraph that it is infected with the incurable vice of being simply a reenactment of existing law, and yet but a few moments ago we were assured that the chief virtue of the Sterling substitute, or the so-called Moon bill, is that it is merely a reenactment and declaration of existing law or practice. The same characteristic, in other words, is a virtue in the substitute, but a vice in the pending bill. I submit that the same rule should be applied to both. This paragraph is criticized because it provides that the writ of injunction in labor disputes shall be limited to the protection of property and property rights. I am willing that the language of the bill shall be tested by the decisions of the Supreme Court of the United States and that by the decisions of that great court this bill may be justified or by the same decisions it may be condemned. What does that court say in the Debs case itself on this question of jurisdiction in the issuance of injunctions? A quotation of its language will show that it is perfectly true that the first clause of the fourth section of this bill is simply a declaration of an existing rule of law which the Supreme Court has announced.

Mr. STERLING. Mr. Speaker, will the gentleman yield there for a question?

The SPEAKER. Does the gentleman yield?

Mr. DAVIS of West Virginia. I have said I would not yield, but I will.

Mr. STERLING. The gentleman is about to refer to the Debs case?

Mr. DAVIS of West Virginia. I am, for a quotation only.

Mr. STERLING. No person was punished in the Debs case who did not have actual notice of the injunction.

Mr. DAVIS of West Virginia. That is perfectly true, I think; but I do not understand that the gentleman by that question means to justify the portion of the Debs order which was directed to the world at large.

Mr. STERLING. Not at all; and the gentleman can not say from reading the opinion that the courts would have punished any person for contempt who did not have actual notice.

Mr. DAVIS of West Virginia. It may be that the Supreme Court of the United States would not; indeed, I do not believe it would have justified such a punishment. I have heretofore cited the Debs case, however, as an illustration of the fact that the inferior courts in issuing the writ of injunction have at times transcended their power and should be curbed. [Applause.]

Mr. STERLING. I agree with the gentleman that that part of the order should not have been in the decree, but the gentleman does not pretend to criticize the court in punishing some one who was either not a party or who did not have actual notice?

Mr. DAVIS of West Virginia. Of course, I am not retrying the Debs case; I am discussing House bill 23635 and the subjects to which it refers, and I say the first paragraph of the fourth section of this bill does announce existing law; it is not aimed at the destruction of civil rights; it does not tear down the pillars of the temple; it simply announces a rule of law bearing no less sanction than the Supreme Court of the United States. I read from the decision in the Debs case:

Something more than the threatened commission of an offense against the laws of the land is necessary to call into exercise the injunctive power of the court. There must be some interference, actual or threatened, with property or rights of a pecuniary nature, but when such interferences appear, the jurisdiction of a court of equity arises and is not destroyed by the fact that they are accompanied by or are themselves a violation of the criminal law.

Mr. MOON of Pennsylvania. Will the gentleman yield?

Mr. DAVIS of West Virginia. I regret it, but I can not yield further.

The SPEAKER. The gentleman declines to yield.

Mr. DAVIS of West Virginia. Before I leave that particular topic, I find further sanction for the language of this bill in a bill introduced by no less person than the ranking member of the minority of the Judiciary Committee himself. The bill introduced by the ranking member of the minority of the Judiciary Committee, Mr. STERLING, on the 9th day of March, 1912, with reference to the issuance of injunctions and temporary restraining orders contains the language:

Provided, however, That if it shall be made to appear to the court or judge that delay will result in irreparable injury to property or property right, the court shall so certify on the back of the application, and in such case the injunction or restraining order may issue without notice.

And I think he will agree that the quotation I have read from the decision in the Debs case is a correct statement as to the limitation of the equitable power of injunction.

The second paragraph of section 266c of the bill is an effort to crystallize into law the best opinions of the best courts as to those things which may be lawfully done in a trades dispute without interference by injunction. This is criticized by the minority as a proposal without precedent in legislative history, but at the same time the minority say in their report upon the bill that:

Most of the acts thus recited are in themselves not amenable to the injunction process under existing law and practice. No court does or would enjoin them.

Perhaps the most careful and impartial study which has been made of the question of trades disputes in recent years is the Treatise on the Modern Law of Labor Unions, by W. A. Martin, published in the year 1910. As against those who deny that organized labor has any just grievance in this matter, I quote the language of this learned writer in his preface, in which he says:

There is, however, a great lack of harmony in the decisions relating to trade disputes, and many of them, it is believed, are erroneous in principle and oppressive and unjust to organized labor. In this cate-

gory may be placed decisions which hold without qualification that strikes or threats of strikes to procure the discharge or prevent the employment of workmen are unlawful and criminal, as being unwarrantable interference with the business of the employer, and an invasion of the rights of the workmen against whom these acts are directed; denying unions the right to exercise disciplinary measures in accordance with their rules and by-laws, to compel insubordinate members to join in a lawful strike or continue on strike after going out; holding that all picketing is unlawful; enjoining unions at the instance of an employer against whom a strike is in operation from giving strike pay or using its funds in furtherance of picketing; requiring defendants against whom a writ of injunction, defective and ambiguous in its terms, has been awarded, to ascertain—or, more properly speaking, to attempt to ascertain—what is prohibited by reading the writ in connection with the bill.

If either statement be true, is it not an act of simple justice to say so? An uncertain standard for civil conduct or legal remedy is a constant invitation to misunderstanding and discord. When capital and labor clearly understand each other's rights, the first step on the road to industrial peace will have been taken. This bill is intended to promote that understanding. With the laboring men the country over demanding this reform; with Presidents and platforms, law writers, and even judges agreeing that it is necessary, why should any man be unwilling to grant this relief?

What reason is there for refusing to recognize the right of the employer to discharge his workman and the right of the workman to leave the service of his employer? These rights are above and beyond control by any process of injunction. Would any employer tamely submit to a court order which compelled him to retain in his service a man whose labor was no longer useful to him? Can any man be compelled to labor against his will? If the employer breaks a contract by discharging his employee, or if the employee breaks a contract by leaving his employer, the remedy is an action for damages. The process of injunction does not fit the case.

THE RIGHT TO STRIKE.

The right to strike has won its way against the judicial opposition of a hundred years. In the earliest reported case in England, that of Rex *v.* Journeymen Tailors of Cambridge (8 Modern, 10) it was held that a combination to raise wages by quitting work simultaneously was a criminal conspiracy and indictable accordingly. It took an act of Parliament to wipe this pernicious doctrine out of the English law. Many of the States in this country, notably Alabama, Connecticut, Colorado, Georgia, Illinois, Indiana, Louisiana, Maine, Massachusetts, Michigan, Montana, New Hampshire, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, West Virginia, and Mississippi, have forbidden by express statute the use of force, violence, or intimidation in trades disputes, but the right to strike and to persuade others by peaceful means to join in doing so is now too well established for argument. Of course, if that be true, gentlemen will say again, Why legislate about it? The answer is found in such orders as were issued by Judge Jenkins in Farmers' Loan & Trust Co. *v.* Northern Pacific Railroad Co. (60 Fed., 803), which Judge Harlan, sitting in the circuit court of appeals, very properly rebuked in the case of Arthur *v.* Oakes (63 Fed., 310). His language is worth repetition. He said:

> If an employee quits without cause, and in violation of an express contract to serve for a stated time, then his quitting would not be of right, and he would be liable for any damages resulting from a breach of his agreement, and perhaps, in some states of case, to criminal prosecution for loss of life or limb by passengers or others, directly resulting from his abandoning his post at a time when care and watchfulness were required upon his part in the discharge of a duty he had undertaken to perform. And it may be assumed for the purposes of this discussion that he would be liable in like manner where the contract of service, by necessary implication arising out of the nature or the circumstances of the employment, required him not to quit the service of his employer suddenly, and without reasonable notice of his intention to do so. But the vital question remains whether a court of equity will, under any circumstances, by injunction, prevent one individual from quitting the personal service of another? An affirmative answer to this question is not, we think, justified by any authority to which our attention has been called or of which we are aware. It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. One who is placed under such constraint is in a condition of involuntary servitude—a condition which the supreme law of the land declares shall not exist within the United States, or in any place subject to their jurisdiction. Courts of equity have sometimes sought to sustain a contract for services requiring special knowledge or skill by enjoining acts or conduct that would constitute a breach of such contract.
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> The rule, we think, is without exception that equity will not compel the actual, affirmative performance by an employee of merely personal services, any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him for service of that character. The right of an employee engaged to perform personal service to quit that service rests upon the same basis as the right of his employer to discharge him from further personal service. If the quitting in the one case or the discharging in the other is in violation of the contract between the parties, the one injured by the breach has his action for damages; and a court of equity will not, indirectly or negatively, by means of an injunction restraining the violation of the contract, compel the affirmative performance from day to day or the affirmative acceptance of merely personal services. Relief of that character has always been regarded as impracticable.

If newspaper reports are correct, within the last 12 months a similar injunction was issued from a court in the city of Des Moines, Iowa, and was heralded as a new and valuable discovery in the settlement of labor disputes. Can it be said that men whose rights are so infringed upon have no grievance?

THE RIGHT TO PICKET.

Or take again the question of the right to picket. The language of the bill with reference to "picketing" is borrowed from the English trades dispute act of 1906, and prohibits an injunction against—

> attending at or near a house or place where any person resides or works or carries on business or happens to be for the purpose of peaceably obtaining or communicating information, or of peaceably persuading any person to work or abstain from working.

So well does this express the current of American judicial opinion on this subject that in Martin's Modern Law of Labor Unions, to which I have referred, it is said:

> This statute might well be termed a codification of the law relating to peaceful picketing as laid down by a majority of the American courts.

To emphasize this statement, I ask your indulgence while I read two quotations of some length from Federal decisions. In the case of Pope Motor Car Co. *v.* Keegan et al (150 Fed., 148), the court uses this language:

> To interfere by violence, by threats, or by intimidation, with others who are pursuing their natural and constitutional right to labor when and where they please, is always wrong and always unlawful. No sense of personal wrong, however great, however natural, or however excusable, can justify such interference. No offended sense of right, as, for instance, that another is unjustly "taking his job," gives warrant to such interference. The strikers themselves are entitled to no more rights than those whom they find working in their old places. Individual freedom is the chief of the rights of justice. It can not be said that a job is held except by mutual consent. It can not be claimed by any intelligent man that one holds his job whether his employer desires it or not. As well might we say that the workman, against his will, can be held to service by his employer.
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> But nothing can be better settled, either in law, in conscience, or in common sense, than that every man may seek or refuse work wheresoever he will; that workmen may combine for their mutual advantage; that they may persuade fellow workmen, or others, to leave their employment; but such persuasion must be such as to persuade by reason, and not compel by threat or violence, or intimidation. One of the forms of persuasion which, under proper circumstances, the law recognizes as permissible, is "picketing" by strikers; that is to say, the detachment of men to suitable places for the purpose of coming into personal relations with the new workmen, in order, if possible, to induce them, by means of peaceful argument, to leave the places which they have taken, for such natural and proper reasons as may appeal to men in such circumstances.

And again in Iron Molders' Union *v.* Allis-Chalmers Co. (166 Fed., 50), the rights of the parties to a trades dispute are summed up as follows:

> The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting. For another thing that must not be forgotten is that a strike is one manifestation of the competition, the struggle for survival or place, that is inevitable in individualistic society. Dividends and wages must both come from the joint product of capital and labor. And in the struggle wherein each is seeking to hold or enlarge his ground, we believe it is fundamental that one and the same set of rules should govern the action of both contestants. For instance, employers may lock out (or threaten to lock out) employees at will, with the idea that idleness will force them to accept lower wages or more onerous conditions; and employees at will may strike (or threaten to strike), with the idea that idleness of the capital involved will force employers to grant better terms. These rights (or legitimate means of contest) are mutual and are fairly balanced against each other. Again, an employer of molders, having locked out his men, in order to effectuate the purpose of his lockout, may persuade (but not coerce) other foundrymen not to employ molders for higher wages or on better terms than those for which he made his stand, and not to take in his late employees at all, so that they may be forced back to his foundry at his own terms; and molders, having struck, in order to make their strike effective may persuade (but not coerce) other molders not to work for less wages or under worse conditions than those for which they struck, and not to work for their late employer at all, so that he may be forced to take them back into his foundry at their own terms. Here, also, the rights are mutual and fairly balanced. On the other hand, an employer, having locked out his men, will not be permitted, though it would reduce their fighting strength, to coerce their landlords and grocers into cutting off shelter and food; and employees, having struck, will not be permitted, though it might subdue their late employer, to coerce dealers and users into starving his business. The restraints, likewise, apply to both combatants and are fairly balanced. These illustrations, we believe, mark out the line that must be observed by both. In contests between capital and labor the only means of injuring each other that are lawful are those that operate directly and immediately upon the control and supply of work to be done and of labor to do it, and thus directly affect the apportionment of the common fund, for only at this point exists the competition, the evils of which organized society will endure rather than suppress the freedom and initiative of the individual. But attempts to injure each other by coercing members of society who are not directly concerned in the pending controversy to make raids in the rear can not be tolerated by organized society, for the direct, the primary, attack is upon society itself. And for the enforcement of these mutual rights and restraints organized society offers to both parties, equally, all the instrumentalities of law and of equity.
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> With respect to picketing as well as persuasion, we think the decree went beyond the line. The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain

who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under the name of persuasion, duress may be used; but it is duress, not persuasion, that should be restrained and punished. In the guise of picketing, strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault. But from the evidence it can always be determined whether the efforts of the pickets are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free judgments. Prohibitions of persuasion and picketing, as such, should not be included in the decree. Karges Furniture Co. *v.* Amalgamated Wood Workers' Union (165 Ind., 421; 75 N. E., 877; 2 L. R. A. (N. S.), 788); Everett-Waddy Co. *v.* Typographical Union (105 Va., 188; 53 S. E., 273; 5 L. R. A. (N. S.), 792).

But compare with these words such expressions as the intemperate language of a Federal judge in the case of Atchison, Topeka & Santa Fe Railway Co. *v.* Gee (139 Fed., 584), who said:

There is and can be no such thing as peaceful picketing any more than there can be chaste vulgarity or peaceful mobbing or lawful lynching.

THE SECONDARY BOYCOTT.

Gentlemen say that the effect of this bill is to legalize the so-called "secondary boycott." I deny it. In the first place, as the gentleman from Pennsylvania [Mr. WILSON] has said, the word "legalize" is misused. The bill does not pretend to be a code governing the conduct of trades disputes. All that is attempted here is to say that certain acts are not amenable to the process of injunction, whatever other rights or remedies may grow out of them; but within the acts enumerated by this bill, the secondary boycott is certainly not included.

It is not surprising, however, that gentlemen should fall into error on this subject when the courts themselves have not been always clear. The Supreme Court of the United States, in the late case of Gompers *v.* Bucks Stove & Range Co., calls attention to this conflict among the courts, and says:

The courts differ as to what constitutes a boycott that may be enjoined. All hold that there must be a conspiracy causing irreparable damage to the business or property of the complainant. Some hold that a boycott against the complainant by a combination of persons not immediately connected with him in business can be restrained; others hold that the secondary boycott can be enjoined where the conspiracy extends not only to injuring the complainant, but secondarily coerces or attempts to coerce his customers from dealing with him by threats that unless they do they themselves will be boycotted. Others hold that no boycott can be enjoined unless there are acts of physical violence or intimidation caused by threats of physical violence.

What is the secondary boycott? It can be summed up in a sentence as coercion in some form directed against a person who is not a party to the trades dispute, in order to force him to join in injuring one of the parties to the dispute. It is a clear invasion of the rights of neutrals. The law recognizes the fact that a man may employ whomever he chooses and may be employed as long as he will. When the relation of employer and employee ends, either may withdraw patronage or favor from the other; either may announce to his friends that he has so withdrawn; but neither can say to friend or foe that at the risk of personal injury they must, though unwilling, join in the conflict.

The language of this bill is:

from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful means so to do.

Does anything less than this protect the fundamental and constitutional rights of the parties concerned? I repeat that the essence of the secondary boycott is coercion directed toward a person not a party to the dispute. This bill does not countenance coercion toward anyone, and least of all toward third parties. I ask leave for another quotation from Martin's Modern Law of Labor Unions, pages 107 to 109, to which I have referred, in support of this position:

It is lawful for members of a union acting by agreement among themselves to cease to patronize a person against whom the concert of action is directed, when they regard it for their interest to do so. This is the so-called "primary boycott," and in furtherance thereof it is lawful to circulate notices among the members of the union to cease patronizing one with whom they have a trade dispute, and to announce their intention to carry their agreement into effect. For instance, if an employer of labor refuses to employ union men, the union has a right to say that its members will not patronize him. * * *

In a preceding chapter it has been shown that in aid of a lawful strike, it is lawful to use peaceable persuasion and argument to induce other workmen in the employ of the person against whom the strike has been declared, and not bound by contract for a definite term, to quit his service or to induce other workmen not in his employ not to enter his service. There is practically no dissent from this doctrine, and by parity of reasoning it is not unlawful for members of a union or their sympathizers to use, in aid of a justifiable strike, peaceable argument and persuasion to induce customers of the person against whom the strike is in operation to withhold their patronage from him, although their purpose in so doing is to injure the business of their former employer and constrain him to yield to their demands; and the same rule applies where the employer has locked out his employees. These acts may be consummated by direct communication or through the medium of the press, and it is only when the combination becomes a conspiracy to injure by threats and coercion the proper rights of another that the power of the courts can be invoked. The vital distinction between combinations of this character and boycotts is that here no coercion is present, while, as was heretofore shown, coercion is a necessary element of a boycott.

REQUIREMENT OF PEACEFULNESS.

It will be seen that all throughout the section there runs the requirement of peacefulness. Force, violence, intimidation, fraud, coercion—none of these will any man seek to justify, whether they be used in a trades dispute or elsewhere. They have occurred; no doubt they will occur again; but it is only fair to say that in many cases where they might have been anticipated they have not occurred at all; and I believe it equally fair to say that in many a labor dispute where turmoil, strife, and violence have arisen not the laboring men themselves, but lawless men in no way connected with them have seized the opportunity and the pretext to break the bonds of law and order. Lawless and criminal men have attached themselves to the organizations of workingmen, as they have done to every organized unit of human society since history began. But I for one will never believe that the great body of workingmen of this country—those who in the language of Jesus, the son of Sirach, "maintain the fabric of the world" and without whom "shall not a city be inhabited"—are any less devoted to free institutions, any the less friends of established order, any the more ready to violate the law than those of other occupations or different opportunities. Well might we tremble if it were otherwise.

Look at the English coal strike—happily, just ended. I read only the other day in a dispatch from London that the anarchist leaders are disgusted with what they are pleased to call the tractability of English toilers. Can history parallel their conduct? Nearly 2,000,000 workers out and not a single serious act of violence—nay, not an angry word spoken against the monarchy.

Read the address issued on the 13th of April last by the officers of the Anthracite Mine Workers to their men. It says:

The unanimous response of the anthracite mine workers to the suspension order and the peaceful manner in which they have conducted themselves since they ceased work, April 1, are most gratifying. Every colliery is idle; each and every man composing the great army of mine workers, numbering 170,000, ceased work. They will remain idle until a settlement of the wage scale is reached. The success of a movement of this kind, however, depends largely upon the orderly, law-abiding manner in which each and every man conducts himself.

And then the address goes on to warn the men to—

beware of any who counsel to violence in any form—

and calls upon them to conduct themselves in a law-abiding manner.

I denounce as a libel upon American citizenship the assertion that the laboring men of this country are ever ready at the word to break into lawlessness or that they sympathize with those who do. And I pity the man who takes such counsel of his fears as to be unwilling to recognize and accord to them by statute and in practice the full use of every legitimate weapon of offense or defense in all trade wars and the untrammeled exercise of every constitutional right. Not to do so is but to furnish to the demagogue and the agitator a genuine grievance to be magnified and a ready means with which to fan the flames of discontent, hatred, disorder, and violence. Let us see to it here and now that no such pretext hereafter shall remain to him.

CLASS LEGISLATION.

It has been suggested by those opposed to section 266c of this bill that it is class legislation. Such an assertion mistakes the meaning of the term. It is not legislation which confers upon the employer or the employee or upon those seeking employment any immunity or privilege which others do not enjoy, nor does it take away from either employer or employee any right which others might exercise. It does not even undertake to codify the rights of employer and employee in trade disputes, a thing which has been done elsewhere and may, soon or late, have to be done here.

It does undertake to regulate to a limited extent the procedure in cases arising from such disputes, but in doing so it simply announces rules common to other cases in equity, and it does declare that certain acts lying within the rights of the parties shall not be infringed upon by any injunction. Had these rules of procedure been uniformly followed, as they should have been; had these rights been uniformly recognized, as they should have been, there would have been little demand for this legislation, and less reason for its enactment; but the mere fact that it relates, in part, to a certain well-recognized class of cases makes it smack no more, perhaps not even so much, of class legislation as a dozen *statutes* already on the books. What, for instance, of the liability act as to common carriers and their employees, which affects both the rights and the remedies of those who stand in that relation; what of the proposed compensation acts for workmen employed by the Government or by the railroads; what, indeed, of the interstate commerce act itself, which defines the relative rights between the shipper on the one hand and the carrier on the other, and prescribes

their remedies? In this sense, what are your factory laws but class legislation for the benefit of mill hands; what your eight-hour day, your children's bureau, and so on down the long list of laws aimed to give relief for specific evils where relief is needed? I repeat that it is no objection to any law that it is intended to right the wrongs of any class, race, or section of society, so only it gives no more than equal and exact justice. Class legislation, in the vicious sense of the word, means special privilege, and special privilege only, and against this the Democratic Party has sworn eternal and unending war. This is both the letter and the spirit of the declaration made in the Democratic platform that—

We believe that the parties to all judicial proceedings should be treated with rigid impartiality, and that injunctions should not be issued in any cases in which injunctions would not issue if no industrial dispute were involved.

And this is the thought which underlies that provision of the bill forbidding an injunction against—

any act or thing which might lawfully be done in the absence of such dispute by any party thereto.

CONSTITUTIONALITY.

It has been hinted, not argued, that this measure goes beyond the constitutional power of Congress as to the courts. Time does not permit a discussion of this phase of the matter. I must content myself with a mere quotation again from the Supreme Court of the United States in the case of In re Robinson (19 Wall., 505), having reference to the power to punish for contempt:

The power has been limited and defined by the act of Congress, March 2, 1831, and the act in terms applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt, but that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence or subsequent acts extending or limiting their jurisdiction. The act of 1831 is therefore to them the law specifying cases in which summary punishment for contempt may be inflicted.

CONCLUSION.

It is easy to be aphoristic on this whole subject. It is less trouble to deny the existence of any evil than to search it out and find means for its correction. It involves little effort to content ourselves with generalities—to declare in favor of the stability of the courts, the preservation of law and order, and the integrity of judicial power as essential to the peace, order, and well-being of civilized society. With such a declaration, no sane man can disagree. The courts of justice are, indeed and in truth, the bulwark of our liberties, and the Democratic platform well declares that—

we yield to none in our purpose to maintain their dignity.

On the other hand, there are those who, recognizing the need of reform, are ready to rush headlong after so-called remedies, which when put to the test will only aggravate the disease they are supposed to cure. With those who believe that by applying the doctrine of the recall to judicial officers the courts will be elevated, justice promoted, or free government made secure, I must differ—respectfully I hope—but none the less with all the vigor I can command. Herodotus tells us that King Cambyses, displeased at one of his judges, Sisamnes, for his giving of an unrighteous sentence, slew and flayed him, and cutting his skin into strips, stretched them across the seat of the throne whereon he had been wont to sit when he heard causes. Having so done, Cambyses appointed the son of Sisamnes to be judge in his father's room and bade him never forget in what way his seat was cushioned. This was the recall with a vengeance. But how much more unlucky the father or unhappy the son than would be any judge of sensitive honor over whose head there hung suspended the sword of dismissal in disgrace for any decision unpleasing to the popular will?

When the great Chief Justice John Marshall uttered his solemn and oft-quoted warning against an ignorant, a corrupt, and a dependent judiciary, he rightfully drew no distinction as to evil eminence between the three vices named, nor can I do so, unless indeed the poison of dependence be the most deadly of all. An ignorant judge may be informed, a corrupt judge may be detected and exposed, but a judge cowed into impotence or tempted to excess by dependence upon the constant favor of the appointing power or the continued smile of public approval is of all men most pitiable and most dangerous.

In an apparent effort to out-Herod Herod, a distinguished ex-President—eager as always to be newer than the newest, more original than the most original, and more progressive than the most advanced—has treated us to a variation of this theme and soberly proposes that in certain causes the decisions of the courts shall be reheard and revised by popular vote. The end sought by such a proposition from such a source is to accomplish what no other American has ever accomplished, and what patriots like Washington, and Jefferson, and Madison, and Monroe, and Jackson did not attempt, what Grant failed to attain, and what McKinley would have refused to consider had he lived. It is not a case surely where the end justifies the means, but at least it explains it. If a third term in the Presidency would be extraordinary and unique, the recall of judicial decisions would indeed be unique and extraordinary. But to those who think that this particular idea is actually new and because new is necessarily progressive, I commend the language of a great man, who, speaking of the forms of government, said that there is a—

form of democracy in which not by law, but the multitude have the supreme power and supersede the law by their decrees. This is a state of affairs brought about by the demagogues, for in democracies which are subject to the law the best citizens hold the first place and there are no demagogues; but where the laws are not supreme there demagogues spring up. For the people becomes a monarch and is many in one; and the many have the power in their hands, not as individuals, but collectively. And the people, who is now a monarch and no longer under the control of law, seeks to exercise monarchial sway and grows into a despot; the flatterer is held in honor; this sort of democracy being relatively to other democracies what tyranny is to other forms of monarchy. The spirit of both is the same, and they alike exercise a despotic rule over the better citizens. The decrees of the voters correspond to the edicts of the tyrant, and the demagogue is to the one what the flatterer is to the other. Both have great power, the flatterer with the tyrant, the demagogue with democracies of the kind which we are describing. The demagogues make the decrees of the people override the laws, and refer all things to popular assembly. And therefore they grow great, because the people have all things in their hands, and they hold in their hands the votes of the people, who are too ready to listen to them. Further, those who have any complaints to bring against the magistrates say "let the people be judges"; the people are too happy to accept the invitation, and so the authority of every office is undermined. Such a democracy is fairly open to the objection that it is not a constitution at all, for where laws have no authority there is no constitution. The law ought to be supreme over all, and the magistracies and the government should judge of particulars.

Strange to say, these words were not written by an American statesman in criticism of the speech of a presidential candidate at Columbus, Ohio. They were uttered 2,400 years ago by Aristotle, the wisest of the Greeks.

Believe me, there is a surer and a safer road. "If judicial processes may be abused, we should guard them against abuse." If in the multitude of precedents and the clash of conflicting interests the courts have wandered from the path, let us resolutely call them back to it and by a statute such as the bill under discussion let us say: "This is the way; walk ye in it." Criticism of the courts is rife; let us disarm it.

I desire, Mr. Speaker, in conclusion to content myself by quoting with approval the language of the great Italian statesman, Cavour, who said:

I am not an alarmist; nevertheless, without being one, I think we can see at least the possibility, if not the probability, of stormy times. Well, gentlemen, if you wish to take precautions against these stormy times, do you know the best way? It is to push reforms in quiet times, to reform abuses when these are not forced upon you by extremists.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed the following resolution:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (H. R. 20840) to provide for deficiencies in the fund for police and firemen's pensions and relief in the District of Columbia.

The message also announced that the Senate had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the following bills:

H. R. 18954. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war;

H. R. 18337. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war;

H. R. 18335. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War; and

H. R. 18955. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war.

The message also announced that the Senate had insisted upon its amendment to the bill (H. R. 17681) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1913, and for other purposes, disagreed to by the House of Representatives, had agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. GALLINGER, Mr. CURTIS, and Mr. FOSTER as the conferees on the part of the Senate.

The message also announced that the Senate had disagreed to the amendment of the House of Representatives to the bill (S. 5930) to extend the time for the completion of dams across the Savannah River, by authority granted to Twin City Power Co. by an act approved February 29, 1908, had asked a conference with the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. NELSON, Mr. BOURNE, and Mr. FLETCHER as the conferees on the part of the Senate.

REGULATION OF INJUNCTIONS.

Mr. CLAYTON. Mr. Speaker, may I inquire how much time the gentleman from Illinois [Mr. STERLING] has consumed on his side?

The SPEAKER. The gentleman from Illinois has consumed 75 minutes.

Mr. CLAYTON. How much has he remaining?

The SPEAKER. He has consumed exactly half of his time—one hour and a quarter.

Mr. CLAYTON. So he has an hour and a quarter remaining. How much time has been consumed on this side?

The SPEAKER. The gentleman has 59 minutes left.

Mr. CLAYTON. I ask the gentleman from Illinois to consume at least 30 minutes of his time.

Mr. STERLING. I yield 30 minutes to the gentleman from Minnesota [Mr. NYE].

Mr. NYE. Mr. Speaker, I am sure we all recognize the grave importance of the subject now before us. Whether the bill itself is so far-reaching in its importance as some think it is or not, the subject before the House is one, the importance of which can not be overestimated. Whatever may be the consequences of our action to us personally, we have no right to shrink from that duty which devolves upon us to deal with the subject as its importance requires. Daniel Webster, in his eulogy of Judge Story, said:

> Justice is the great interest of man on earth. It is the ligament that holds civilized beings and civilized nations together; wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the progress and improvement of our race. And whoever labors upon that temple with usefulness and distinction; whoever helps to clear its foundations, to strengthen its pillars, to adorn its entablatures, or helps to raise its august dome still higher in the sky, connects himself in name and fame and character with that which is and must be as durable as the frame of human society.

We deal with the great principles of justice to-day, and perhaps only time will tell whether our action shall add strength and beauty to this great temple of justice, of which Webster spoke, or whether its tendency shall be to weaken, and perhaps finally destroy, that which is sacred to all men, and more so to the laboring and toiling masses of this country than to any other class in the world.

We may differ, and honestly differ. But we should face this issue just exactly as it is. The real issue here has not been, I think, frankly presented—the issue which involves, as many think, the industrial and social well-being of the country, and I may say its political well-being also. The real issue has not been presented to-day. Let us fairly consider it and let us know what it is.

The long hearings that were had before the Committee on the Judiciary upon the subject of injunctions and contempt of court were not had upon this precise bill that is now presented. The real contention of organized labor, as I understand, or the representatives of organized labor, is that there should be a radical change in the administration of the law, or in the interpretation of the law, and that the courts have encroached upon the fundamental rights of the citizen.

The Pearre bill, which was before Congress for several sessions, contained radical provisions to the effect that the right to do business, or the good will in business, was not such a property right as would authorize the issuance of an injunction. It contained another radical provision—that an act committed by several persons jointly should not be regarded as criminal or a violation of the law and should not authorize the right of injunction unless the act when committed by a single individual would be so regarded. These are essential and vital contentions, which, as I understand, the distinguished leaders of labor organizations have insisted upon.

I am not able to subscribe to these provisions, but these were the main provisions contended for, and the Wilson bill, introduced by the distinguished gentleman from Pennsylvania [Mr. WILSON], was really the bill which contained the provisions in the Pearre bill which I have referred to and which we considered in the Judiciary Committee. The Wilson bill was substantially the Pearre bill. I think the issue presented by organized labor should be fairly met and Congress should determine this great issue, for it is a great issue. If it be true that the law has been perverted and the courts have transgressed their authority on the equity side of their jurisdiction and to the detriment and oppression of the workingmen of America, that ought to be known. But this bill is far from the Wilson bill or the Pearre bill. Evidently the majority of the committee thought the demands of organized labor too radical and they reported in its place the bill now under consideration.

I do not know just why this bill was finally agreed upon by the majority of the committee and the Wilson bill so summarily disposed of, but this bill was at any rate substituted. There are some provisions in the present bill which are good, no doubt. If there is any means of correcting and improving the equitable procedure in the courts to the end of securing a greater degree of justice, I am certainly in favor of it. The great problem, it seems to me, is this, on the one hand to prevent abuses of the writ and on the other hand to leave in the courts all necessary power to prevent wrongs which nothing but a court of equity can prevent.

I know there has been much discussion here concerning the abuse of the writ. I do not care to enter into it. I know that labor leaders claim, and honestly claim, no doubt, that there have been numerous abuses. I know that the majority of the committee claim that there have been numerous abuses. In the long hearings we have had it seems to me there has been an almost total failure to show such abuses, although I have no doubt there are some and perhaps many. But even if there are, can we afford to change the administration of equity as it has been recognized for centuries? Is it safe to do so for the purpose of correcting whatever individual abuses there may be?

For my own part I have been reared and taught to respect, not alone justice in the abstract, but the human instrumentalities of justice through which it must be administered. And I believe in the courts; that judges are human; that they make mistakes; are sometimes governed too much, it may be, by passion I do not doubt, because I know that human nature is itself fallible. But I do contend that in the judiciary, with its courts scattered over the broad land in every locality, State and county, almost, as they are, with judges educated in the law and whose habits of thought lead them to study carefully questions coming before them, to ascertain the facts and reach true conclusions, we find the strongest element of national safety and stability. I claim that we have in the great judiciary of the American Nation our final hope and anchor. Whatever storms or danger the old ship of state may encounter, the judiciary will be the anchor and hope of the American people. [Applause.]

This House, sir, may be swayed by passion or prejudice, and so may the Senate, and so may the Executive. But, generally speaking, in the country at large, with this scattered judiciary of men who are high minded, men of integrity, honor, and learning, passion does not and can not sway the courts. It is the great steadying and conservative force of the Nation. In its preservation, its dignity, its honor, and its strength every honest citizen is concerned, the working classes most of all.

I say, therefore, Mr. Speaker, let us proceed with the utmost caution in any changes we may make in the law governing this great equity jurisdiction. Its function is to prevent wrong, and no one desiring to be free from any wrongdoing ought to fear it.

There are two principal criticisms upon the bill, which I will mention in the limited time I have. First, it seems to regulate the administration of equity rather according to the parties to the suit than the wrongs sought to be righted. In other words, the benefits sought are partial, and limited to that particular class of people who have been referred to in this debate as the working people of the country. I do not think the working people want special legislation, and no one, it seems to me, can read the bill and see how it emphasizes labor disputes and labor troubles without feeling that it is a bill shaped rather to accommodate certain parties than to deal with great principles applicable to everybody.

The second criticism is that it attempts to point out in advance those particular acts which shall not be enjoined. No human foresight or intelligence can do this with safety. It enumerates certain acts which are not now ordinarily the subject of injunction, but they are acts which under some circumstances may be vicious and dangerous to society.

My esteemed and learned colleague [Mr. MOON of Pennsylvania] pointed out in the report which we have signed where our courts have emphaasized and called attention to the fact that an act innocent under some circumstances may be wrongful in others, and this bill attempts to make the whole question dependent upon an act which may be innocent of itself but may constitute a step in a conspiracy that would be subversive of all law and order and all that is essential to private rights or social safety. I take the ground that we had better

leave this great function of equity, imperfectly though it may be administered, than to attempt in our human intelligence to point out the specific acts which shall authorize a court of equity to act.

Mr. HUGHES of New Jersey. Will the gentleman yield?

Mr. NYE. I will; but I think my time is about out.

Mr. HUGHES of New Jersey. I do not want to take up the gentleman's time, but does the gentleman think whether an act is criminal or not should be left to the discretion of the courts, rather than an attempt on the part of the majority to set those acts down?

Mr. NYE. I will say to the gentleman I see no way in the world in the practical administration of justice but to place in some human functionary the decision of the question whether the act is criminal or not, and that is the province of equity. Equity is that great conscionable side of the court whose province it is to prevent wrongs rather than to punish them. I believe that as civilization advances it has become necessary and will continue to become necessary, perhaps, to extend this equitable function rather than to curtail it. The individual judge is responsible to his community and to his State and to his country for any abuse of such necessary discretion. I will insert at this point in the RECORD certain observations of the minority, as follows:

The second paragraph of section 266C contains, to our mind, the most vicious proposal of the whole bill. It enumerates certain specific acts and provides that no restraining order or injunction shall prohibit the doing of them. Most of the acts thus recited are in themselves not amenable to the injunction process under existing law and practice. No court does or would enjoin them, but to declare by law that these acts should under no circumstances be restrained, we do not hesitate to say, is a proposal without precedent in the legislative history of this country. No legislature has ever proposed that any act, however innocent itself, should be sanctified irrespective of the motive or purpose of the actor. "No conduct," says Mr. Justice Holmes in Aiken *v.* Wisconsin (195 U. S., 194), "has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law."

The majority have quoted various decisions in which particular acts under the pleadings presented to the court were held lawful and their prohibition denied. The same acts under other circumstances have been held unlawful and enjoined by the very courts, and in the course of the very decisions which the majority cites. Thus in Arthur *v.* Oakes (63 Fed. Rep., 310) Mr. Justice Harlan is quoted to sustain the proposition that no man can by injunction be required to perform personal service for another, and in that decision Justice Harlan eliminated from the injunction the words "and from so quitting the service of the said receivers with or without notice as to cripple the property or prevent or hinder the operation of said railroad." The majority must observe, however, that Mr. Justice Harlan likewise held, "But different considerations must control in respect to the words in the same paragraph of the writs of injunction, and from combining and conspiring to quit with or without notice the service of said receivers with the object and intention of crippling the property in their custody or embarrassing the operation of said railroad." Thus the same act of quitting is lawful under one set of circumstances and unlawful under another, because the concerted action in the first instance, in the opinion of Mr. Justice Harlan, "is a very different matter from a combination and conspiracy among employees with the object and intent not simply of quitting the service of the receivers because of the reduction of wages, but of crippling the property in their hands and embarrassing the operation of the railroad."

The majority undertakes to prescribe a set rule forbidding under any circumstances the enjoining of certain acts which may or may not be actuated by a malicious motive or be done for the purpose of working an unlawful injury or interfering with constitutional rights of employer and employee. In the same opinion Mr. Justice Harlan points out the impossibility of prescribing a set rule of this character and says, "The authorities all agree that a court of equity should not hesitate to use its power when the circumstances of the particular case in hand require it to be done in order to protect rights of property against irreparable damage by wrongdoers. It is as Justice Story said, 'because of the varying circumstances of cases that courts of equity constantly decline to lay down any rule which shall limit their power and discretion as to the particular cases in which such injunction shall be granted or withheld,'" and the authority proceeds, "there is wisdom in this course, for it is impossible to foresee all the exigencies of society which may require their aid and assistance to protect rights or redress wrongs. The jurisdiction of these courts thus operating by special injunction is manifestly indispensable for the purposes of social justice in a great variety of cases, and therefore should be fostered and upheld by a steady confidence." (Story, Equity Jurisprudence, sec. 959B; Arthur *v.* Oakes, 63 Fed., 328.)

Among the acts which the second paragraph of section 266C declares shall not be restrained is to prohibit any person or persons to terminate any relation of employment, or from ceasing to perform any work or labor or from recommending or persuading others by peaceful means so to do; of peaceably persuading any person to work or to abstain from working, or from ceasing to patronize or employ any party to such dispute or from recommending, advising, or persuading others by peaceful means so to do"; etc.

While many of these acts are in themselves entirely harmless and would never be enjoined by any court, yet under certain circumstances the same acts might become a weapon of lawless and destructive industrial warfare demanding the protection of the courts, this section would prevent the issuance of the injunction in the Debs case (In re Debs, 158 U. S., 564); it would prevent the issuance of the injunction in Toledo & Ann Arbor *v.* Pennsylvania Co. (54 Fed., 730); it would prevent the issuance of any injunction to restrain either workmen or employers who were the objects of the most vicious form of boycott that has been passed upon by the courts, or can be devised by the ingenuity of boycotters. It changes the remedies by which the Sherman Act may be enforced, inasmuch as if any of these acts enumerated in section 266C were the means employed to enforce the restraint of trade or to damage the interstate business of any individual or corporation no injunction could be obtained either by a private individual or by the Government against such acts.

In the Debs case a combination sought to paralyze the railroads of the United States and prevent the carrying of the mail until the railroad companies would agree not to haul Pullman cars because of a controversy between the Pullman Co. and certain of its employees who were not in the employ nor in any way related to the railroad companies. It is true there were acts of violence, but the general scheme was one of persuading all employees of the railroad companies to quit until the demands of the boycotters and strikers had been complied with.

In the Toledo & Ann Arbor case the famous rule 12 of the brotherhood provided that none of its members should handle the cars of any carrier with which members of the brotherhood were in a dispute. In that case the brotherhood employees of the Pennsylvania refused to handle cars of the Toledo & Ann Arbor because of a dispute between that road and some of the brotherhood, and they threatened to quit the service of the Pennsylvania road unles it agreed to violate the provisions of the interstate-commerce act by not affording equal facilities to the cars of another road. No violence was threatened. The brotherhood merely undertook to "peacefully persuade" the Pennsylvania company not to handle the cars of the other road under a threat of leaving their service—a thing which they had a perfect right to do to better their own condition, but not for the purpose of compelling the Pennsylvania Railroad Co. to violate the law.

The majority report quotes at length from the case of Pickett *v.* Walsh (192 Mass., 572), "and regret the necessity of limiting the quotations, because the whole opinion could be studied with profit." We agree with the majority that the whole opinion could have been studied with profit, since it condemns forms of "peaceful persuasion" from which the majority would withdraw equitable intervention. Speaking of the case before it, it says: "It is a refusal to work for A, with whom the strikers have no dispute, because A works for B, with whom the strikers have a dispute, for the purpose of forcing A to force B to yield to the strikers' demands. * * * It is a combination by the union to obtain a decision in their favor by forcing other persons who have no interest in the dispute to force the employer to decide the dispute in their favor. Such a strike is an interference with the right of the plaintiffs to pursue their calling as they think best. In our opinion, organized labor's right to coercion or compulsion is limited to strikes against the persons with whom the person has a trade dispute; or, to put it in another way, we are of the opinion that a strike against A, with whom the strikers have no trade dispute, to compel A to force B to the strikers' demands is unjustifiable interference with the right of A to carry on his calling as he thinks best. Only two cases to the contrary have come to our attention, namely, Bohn Manufacturing Co. *v.* Hollis (54 Minn., 223) and Jeans Clothing Co. *v.* Watson (168 Mo., 133)."

This case which the majority believe could be "studied with profit" is squarely against the proposal of their bill, and the two cases alluded to as being the only ones known to the court contrary to such view, for both have been overruled. Bohn Manufacturing Co. (54 Minn., 223) was overruled in Gray *v.* Building Trades Council (91 Minn., 171). The second case is alluded to by the majority of the committee in support of its contentions and the majority declare the logic of the court in that case "appears unanswerable." This "unanswerable" logic was overruled by the Supreme Court of Missouri in Lohse Patent Door Co. *v.* Fuel (215 Mo., 421).

The majority report also quotes in support of their contention from Vagelahm *v.* Gunter (167 Mass., 92), saying, "Justice Holmes, now of the Supreme Court of the United States, delivered the opinion." The opinion was delivered by Mr. Justice Allen and is squarely against the contention of the majority, Mr. Justice Holmes having delivered a dissenting opinion in which he stood alone. The majority have been driven to the necessity of quoting from other dissenting opinions in support of their opposition, and to these we do not deem it necessary to give attention.

It is said by the majority that no question of constitutionality is involved. We submit that if the measure is to be construed, as it evidently is, to prevent the application of injunctive relief to certain acts in disputes between employer and employee which may be part of a scheme or plan to work irreparable injury, which acts could be enjoined in any other department of litigation, it is obvious that the parties affected would be denied the equal protection of the law and due process of law, coming well within the rule laid down in Connelly *v.* The Union Sewer Pipe Co. (184 U. S., 540); Goldberg *v.* Stablemen's Union (149 Cal., 429); Pierce *v.* Stablemen's Union (156 Cal., 70); and Niagara Fire Insurance Co. *v.* Cornell (110 Fed., 816).

We do not consider the English act of 1906, which is quoted by the majority as a precedent for some of its proposals. There is no parallel whatever between the conditions at which the English act is aimed and the fundamental restrictions of the organic law of this country having no similitude in the constitution of the British Empire. The peculiar privileges conferred upon trades-unions by the English act of 1906 are accompanied by disabilities and criminal provisions of so drastic a nature that if they were offered as any part of the legislation of this country we should deem it our duty to oppose them in the interest of all workingmen.

We agree with the majority that "liberty and more of it is safe in the hands of the workingmen of the country." We are convinced of the merit and truth of that contention. We do not, however, believe that liberty is advanced in the person of any citizen by stripping him of remedial protection through processes which have received the deliberate and mature approval of the English-speaking race during all the centuries of its history. We can not believe that the due protection of person and property under constitutional guaranties and by remedies tested by time is "an impediment to progress," or that the destruction of the essential remedies by which person and property receive protection is "a great social advance." We believe with the President of the United States, in a famous statement made by him many years since to the American Bar Association, "It will not be surprising if the storm of abuse heaped upon the Federal courts and the political strength of Federal groups, whose plans of social reforms have met obstructions in these tribunals, shall lead to serious efforts, through legislation, to cut down their jurisdiction and cripple their efficiency. If this comes, then the responsibility for its effects, whether good or bad, must be not only with those who urge the change, but also with those who do not strive to resist its coming." (Address to American Bar Association at Detroit, 1895.)

I believe the world is advancing. I believe it is getting better. I am glad that this opportunity has come on the floor of this House for every man to meet and honestly consider this great question. The world is moving, and it is moving in a more fraternal and humane spirit. Law is crystallized public opinion. Silently, slowly, but ever surely, it springs from the public mind and conscience and finds its way to the statute books. Industrially, socially, and politically this potent influence is at work. It is more fraternal than heretofore. Your workmen's compensation bill, which will soon come before the House, marks a new era in the history of this country, no matter whether it be passed in its exact form or not. The legislation for safety appliances, children's bureau, shorter hours, and improved conditions of labor, generally, all point to better days. Greater than parties, greater than party success, and greater even than any legislation we can enact is this mighty influence. I have more confidence in its potency than in legislation which, like this bill, seems to interfere with great equitable principles and with the equitable administration of the courts of the country. I believe we are moving in the right direction.

Some of us may go down, and quite possibly I may, because I oppose this legislation which organized labor, under its leadership, to-day insists should be enacted. If I could be convinced that such legislation is wise or right, no one would more cheerfully support it. My personal and political interests would be served by supporting it, if I were to be governed by these. It is because I can not believe it wise or just or permanently beneficial to our people, or any portion of them, that I have opposed it in the committee and on this floor.

I do not believe that the coercive policies of the past will long continue; neither the oppression of the employer nor the resentment of the employee can settle permanently great questions that are at stake.

Mr. BUCHANAN. Will the gentleman yield for a question?

Mr. NYE. My time is about out, but I yield to the gentleman.

Mr. BUCHANAN. Does the gentleman believe that when a workingman is charged with a crime that carries with it a penitentiary penalty or a prison penalty that he should have a right to a trial by jury?

Mr. NYE. Certainly; as to a crime I do. I recognize——

Mr. BUCHANAN. That is one of our present needs.

Mr. NYE. But I recognize, however, that the same act may be a crime which the public can actually and should actually punish and at the same time an offense against a court which the court, for the good administration of justice, must have the right to punish in order to protect itself. That, however, is not in this bill. The question of contempt is not in this bill, although very closely related. Gentlemen, there has been too much politics, too much shrinking from duty, in order that we may get votes. I am ready to lay down the public trust I hold if need be and close my brief service here. Personal consequences to me or to any of us are of little moment when compared with the permanent welfare of the country and all our people. Individuals may go up or go down, but the great tide of civilization moves on, I trust, to better conditions and to a more fraternal spirit. We are coming to recognize labor as the foundation of all, that it is the philosopher's stone that transmutes all substances into gold, and that it should have its just and righteous share of that which it produces, and because that feeling is growing in the human heart the future of the American laborer and the future of the employer, too, is brighter than it ever was before. Unity is to-day the motto and ought to be of our civilization. Coercive policies can not permanently prevail. Peace on earth, good will to men—all men. Gentlemen, I thank you. [Applause.]

Mr. CLAYTON. Mr. Speaker, how much time have I remaining?

The SPEAKER pro tempore (Mr. MARTIN of Colorado). Fifty-nine minutes.

Mr. CLAYTON. How much time has the gentleman from Illinois [Mr. STERLING] remaining?

The SPEAKER pro tempore. The gentleman from Illinois [Mr. STERLING] has 47 minutes.

Mr. STERLING. I think I have 57 minutes.

Mr. CLAYTON. Is that correct?

The SPEAKER pro tempore. The gentleman from Illinois has 47 minutes remaining.

Mr. CLAYTON. The gentleman from Pennsylvania used 1 hour and 15 minutes.

The SPEAKER pro tempore. And the gentleman from Minnesota [Mr. NYE] 28 minutes.

Mr. CLAYTON. According to my mathematics, 47 minutes is right.

The SPEAKER pro tempore. The Chair is advised that that is correct.

Mr. CLAYTON. And the gentleman from Illinois [Mr. STERLING] has 47 minutes, and I have how much?

The SPEAKER pro tempore. Fifty-nine minutes.

Mr. CLAYTON. I now yield 15 minutes to the gentleman from Kentucky [Mr. THOMAS].

[Mr. THOMAS addressed the House. See Appendix.]

Mr. CLAYTON. Mr. Speaker, I ask that the gentleman from Illinois [Mr. STERLING] consume at least 10 or 15 minutes of his time now.

Mr. STERLING. How many speakers has the gentleman on that side? I think the gentleman ought to exhaust all the time except for the closing speech.

Mr. CLAYTON. I have quite a number of gentlemen who want to speak.

Mr. STERLING. There is but one more speech to be made on this side, and I think the gentleman ought to reserve time for only one on that side to close the debate.

Mr. CLAYTON. I think that is quite fair, but I thought the gentleman was going to have several more speakers.

Mr. STERLING. Only one more.

Mr. CLAYTON. With that understanding, then, I will proceed with this side. I now yield, Mr. Speaker, to the gentleman from Kentucky [Mr. SHERLEY] 15 minutes. [Applause.]

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. SHERLEY] is recognized for 15 minutes.

[Mr. SHERLEY addressed the House. See Appendix.]

Mr. CLAYTON. Mr. Speaker, I believe I have 29 minutes remaining.

The SPEAKER pro tempore. The gentleman has 29 minutes.

Mr. CLAYTON. I yield 2 minutes to the gentleman from Iowa [Mr. KENDALL].

[Mr. KENDALL addressed the House. See Appendix.]

Mr. CLAYTON. Mr. Speaker, I yield two minutes to the gentleman from Iowa [Mr. TOWNER].

Mr. TOWNER. Mr. Speaker, I am unwilling to commit this side of the House in opposition to this bill. The party, by its authoritative declarations, has declared in favor of this legislation. For almost a decade Republican Presidents have recommended it to Congress. It would be recreancy on the part of this side of the Chamber if they did not support a reasonable and fair measure presented, having the avowed purpose of this bill.

I do not believe that we can justify ourselves in opposing this bill upon any slight grounds or verbal criticism that may be made with regard to some of its provisions. After a somewhat careful consideration of its terms I am able to say that in my judgment it will do no harm to any property interest of a legitimate character in the United States; it will do no harm to the employer of labor nor to those who work for him, and it will be of incalculable good in settling disputed propositions that have been subject to controversy for many years. [Applause.]

The SPEAKER pro tempore. The time of the gentleman from Iowa has expired.

Mr. WILSON of Pennsylvania. Mr. Speaker, I am in favor of the enactment of this measure, although in my judgment it does not go as far as a measure dealing with the injunctive process, in view of the abuses of it, should go. In my judgment the bill that would best serve the interest of the people of this country at this time is a bill that would draw a distinct dividing line between the property rights and personal relationship, leaving the adjudication of property and property rights to the equity courts and the adjudication of disputes in personal relationship to the law courts.

This bill does not do that, but it goes a long way toward adjusting the difficulties under which workingmen have labored when injunctions have been issued against them in labor disputes.

I take it that there is practically no opposition to any portion of this bill except the last section. In the brief time I have at my disposal I want to call the attention of the House to some of the provisions of the last clause of the bill, and will avail myself of the opportunity to extend my remarks in the RECORD, in order that I may more fully discuss the principles involved in the proposed legislation.

The gentleman from Pennsylvania [Mr. DALZELL] declares that the bill now under consideration exempts organizations of farmers and wage workers from the operations of the Sherman antitrust law, and for that reason he is opposed to the measure. The gentleman is mistaken in his conception of the scope of this bill. The only way in which this measure modifies the Sherman antitrust law is in limiting the use of the injunction process where no property right is involved.

There has been some doubt expressed as to whether or not the Sherman antitrust law was ever intended to apply to organizations of workingmen and farmers when dealing with their own labor or the products of their own labor; but whether or not it was intended to apply to organizations of that character, the fact remains that it has been applied to them. An examination of the debates in the Senate discloses the fact that the author of the law, Senator Sherman, did not intend it to be and did not believe that it would be applied to organizations of workingmen or farmers. In the debate on the bill in the Senate on March 21 and March 24, 1890, Senators Hiscock and Teller called attention to the possibility of the measure applying to organizations of that character. Replying, Senator Sherman said:

> The bill as reported contains three or four simple propositions which relate only to contracts, combinations, agreements made with a view and designed to carry out a certain purpose which the laws of all the States and of every civilized community declare to be unlawful. It does not interfere in the slightest degree with voluntary associations made to affect public opinion to advance the interests of a particular trade or occupation. It does not interfere with the Farmers' Alliance at all, because that is an association of farmers to advance their interests and to improve the growth and manner of production of their crops and to secure intelligent growth and to introduce new methods. No organizations in this country can be more beneficial in their character than farmers' alliances and farmers' associations. They are not business combinations. They do not deal with contracts, agreements, etc. They have no connection with them. And so the combinations of workingmen to promote their interests, promote their welfare, and increase their pay, if you please, to get their fair share in the division of production, are not affected in the slightest degree, nor can they be included in the words or intent of the bill as now reported.

There is a great difference in the effect upon the community between an association of farmers organized for their general welfare to protect themselves against the price of the products of their labor being arbitrarily depressed by the real combinations in restraint of trade, or associations of workingmen organized for the purpose of promoting their welfare and disposing of their labor power to the best advantage, and the combinations of those who deal in the products of labor for the purpose of being able to force down the price paid to the producer and force up the prices paid by the consumer. In the case of the former the welfare of the community is protected; in that of the latter the welfare of the community is injured.

The extension of the writ of injunction from the field of the protection of property rights into the personal relationship between man and man is a renaissance of the theory of government by discretion long since discarded by the Anglo-Saxon people.

For more than a thousand years there has been a continual conflict between the principle of government by law and the practice of government by discretion with the discretion vested first in the King and later in his representative, the chancellor or judge. Government by law is a government of democracy; government by discretion is a government of autocracy.

Injunctions in labor disputes are innovations in our modern jurisprudence. The original purpose for which injunctions were issued was to restrain parties to any dispute about the title or damages to property from interfering with the property in question, until the courts had determined the property rights involved. These restrainng orders were made returnable at the next term of court, or at the session of court where the cases were to be heard and determined, and consequently were never permanent, expiring by their own limitations when the court had convened to determine the question at issue. That they are clearly intended to protect property rights and property rights only is demonstrated by the fact that the courts invariably insist upon a bond being furnished by the parties suing out the writ to indemnify the parties enjoined for any loss that may accrue to them by virtue of the writ having been issued. When such an order of court has been issued it is not a difficult matter for the court to determine the actual damages, if any, that have been sustained through the issuance of the injunction, thereby protecting the restrained parties against any unwarranted invasion of their rights, but when the court issues an injunction in a labor dispute, restraining persons in controversy with employers from doing those things that they have a legal and moral right to do, and as a result of that injunction the contest is lost to the workers, there is no court on earth that can determine the damage that has been sustained by the persons enjoined, and consequently they can not recover from the bond. When the court arrogates to itself the power to issue injunctions never contemplated by the rules of equity, and in direct violation of constitutional and statutory law, and assumes the right to issue injunctions for the purpose of enforcing criminal law, it departs from the domain of property rights and invades that of personal rights in a manner for which there can be no excuse except that the court thereby becomes the sole judge of the law and the fact, and, if the parties enjoined are declared guilty of contempt, the extent of the punishment. All of which is in direct violation of the fundamental laws of the land and the Anglo-Saxon concept of human liberty, as shown by the efforts of the people for more than a thousand years to destroy the arbitrary automatic power of kings and judges.

The peace of Wedmore, concluded between Alfred the Great and Guthram the Dane, A. D. 878, provided that "If a King's thane be charged with the killing of a man, if he dares to clear himself let it be before 12 King's thanes."

The great charter of human liberty, the Magna Charta of Great Britain, the basis upon which British and American freedom rests, in clause 39 declares:

> No freeman shall be taken or imprisoned, disseized, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, save by the lawful judgment of his peers or by the law of the land.

The Bill of Rights enunciated by the British Parliament for the protection of the common people and signed by William and Mary upon their accession to the British throne, as a condition upon which their title to sovereignty would rest, declares:

Paragraph 1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal.

Paragraph 2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

The Declaration of Independence declares: "That all men are created equal, that they are endowed by their Creator with certain inalienable rights, and that among these are life, liberty, and the pursuit of happiness," and it further assigns as one of the causes for the separation from the mother country and the establishment of an independent government, "for depriving us in many cases of the benefits of trial by jury."

The Constitution of the United States, which creates our judiciary, gives to it whatever power it can possibly exercise, and limits its jurisdictions, says, Article III, section 1: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

First amendment. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Sixth amendment. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Ninth amendment. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Tenth amendment. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Thirteenth amendment, section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

It must be apparent to even the most casual investigators that the courts of the United States hold the same relationship to the Government of our country that the courts of Great Britain held and now hold to the regal power. No one will contend that any judge in Great Britain, either at the time of the adoption of our Constitution or since that time, could have any greater power than that conferred by regal authority expressed by the Parliament and approved by the King. It naturally follows that our courts can have no greater power than that granted to them by the Constitution.

When the Constitution granted to our judiciary jurisdiction in equity it was only such power in equity as arises under the Constitution and the laws, and it could not have conveyed any wider authority than that which existed in English jurisprudence at the time of the adoption of the Constitution, and the quotations cited from the Magna Charta, the Bill of Rights, and the Declaration of Independence absolutely deny the right of equity courts to create laws regulating the relations between man and man where no property right exists. Our Government is not only one of delegated powers but also of reserved powers. The same instrument that created the judiciary and delegated powers to it reserves all the powers that are not thus

delegated to the various States and to the people. When, therefore, any court assumes to exercise powers not delegated to it by the Constitution, it invades the rights specifically reserved by that document to the States and people.

Notwithstanding the constitutional limitations mentioned, modern injunctions have taken three distinct lines, two of which are unconstitutional, arbitrary, and unjust.

1. Injunctions are issued to protect property rights from irreparable injury where there is no remedy at law. That is the only province in which an injunction properly belongs.

2. Injunctions have unwarrantably been issued for the purpose of enforcing existing statutory and common law arbitrarily invading the jurisdiction of the legislatures and the law courts, thus wiping out of existence that protection against false accusations that freemen have fought for and forced from the hands of autocratic kings and tyrannical governments and defended at the cost of their lives, in many conflicts with royalty, the right of trial by jury.

When the legislative branch of the Government has specified the punishment for any violation of law, it has provided what, in its judgment, is an adequate remedy and means of protection, and having provided such remedy no court has any right to step in over the head of the legislature and provide another remedy.

3. Modern American courts assume the right to issue injunctions interfering with the personal rights of men in exercising free speech, free press, peaceable assemblage, and in their personal relationship with each other. The rights of free speech, free press, and peaceable assemblage are specifically guaranteed by the Constitution. They are the fundamental safeguards of a free people which neither courts, kings, nor cajolery should be permitted to destroy. The personal relationship between man and man comes clearly within the jurisdiction of the law courts and has no place in the courts of equity, unless upon the assumption by the courts that man is property, an assumption repugnant to the sense of right of all civilized communities and specifically forbidden by the thirteenth amendment to the Constitution of the United States.

As the judicial power extends only to cases in law and equity arising under the Constitution, the laws of the United States, or treaties made under their authority, it seems clear that, aside from equity proceedings growing out of the treaties, the only equity power which the judiciary can exercise is to be found in the original jurisdiction granted by the Constitution and such additional jurisdiction as may be conveyed by law. The original jurisdiction granted by the Constitution, aside from that already stated, is found in section 2 of Article III of the Constitution, which provides that it shall extend to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State or the citizens thereof and foreign States, citizens, or subjects. Even that power is limited by the eleventh amendment, which says, "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any foreign State."

In all other cases the judicial power extends to cases arising under the law. Congress has on various occasions created courts and limited the jurisdiction of the courts thus created. That is true of the Court of Claims and the Commerce Court. There is no question in the mind of your committee of the constitutional power of Congress to limit the jurisdiction of the courts so that it will not extend to the writ of injunction in the cases mentioned in the bill. The extent to which the judicial power has been exercised in recent years in issuing writs of injunction in labor disputes in a manner which would not be considered if no disputes were in existence makes it necessary that some legislation of this character should be enacted. The first writs of this character issued restrained acts of violence only. From that they have gradually broadened until it has become the practice to enjoin men from inducing others to leave their employment or not to enter employment, or from assembling at, near, or within sight of the complainant's property, or from furnishing food, money, or other things of value to workmen on strike, or from moving strikers away from the strike locality, or from exercising the constitutional right of free speech or of free press, or from refusing to patronize people who are obnoxious to them.

It may be that some of these things which they are restrained from doing are wrong, and that they should not be permitted to do them; but if that be true, the legislative branch of the Government should prohibit by law the things that are wrong, and the law courts, not the equity courts, determine the fact of whether or not there has been any violation of the law. By any other course a grave injustice is done to that portion of our people who are least able to protect themselves.

During the Presidential campaign of 1908 Mr. Samuel Gompers, president of the American Federation of Labor, issued a circular letter to the members of that body, expressing his views and the views of organized labor generally on the use and abuse of the writ of injunction by which the equity courts have exceeded their jurisdiction and invaded the jurisdiction of the law courts and the legislative branch of the Government.

Mr. Roosevelt was then President of the United States. He immediately proceeded, in the form of a letter to Senator Knox, to criticize the position taken by Mr. Gompers.

In view of the criticisms of the courts which have been made by Mr. Roosevelt in his present campaign for the Presidency, his position at that time is of more than passing interest, and I therefore desire to include in the RECORD the circular letter of Mr. Gompers, the letter of President Roosevelt to Senator Knox, and an editorial from the American Federationist, written by Mr. Gompers, in reply to the letter of President Roosevelt.

CIRCULAR LETTER OF MR. GOMPERS.

AMERICAN FEDERATION OF LABOR,
Washington, D. C., October 12, 1908.

Men of labor, lovers of human liberty, you are believers in the form of government described by the immortal Lincoln as government of the people, for the people, and by the people. You would not be true Americans if you were not. This form of government—the democratic form—is a government by law and is the direct opposite of the despotic form, which is government by discretion. Government by injunction is government by discretion, in other words, despotic. You would not willingly assist in destroying our present form of government in the United States, and I therefore assume that you would have the issue in this campaign stated plainly and simply, in order that you may do your duty.

The facts are that the judiciary, induced by corporations and trusts and protected by the Republican Party, is, step by step, destroying government by law and substituting therefor a government by judges, who determine what, in their opinion, is wrong; what, in their opinion, is evidence; who, in their opinion, is guilty; and what, in their opinion, the punishment shall be. It is sought to make of the judges irresponsible despots, and by controlling them using this despotism in the interest of corporate power.

In order to do this, it was necessary to proceed secretively to prevent opposition becoming too strong; some strained "justification," for it had to be sought in the Constitution of the United States. The Constitution provides that judges shall have jurisdiction in law and equity, and by extending the jurisdiction of judges "sitting in equity" all safeguards erected to protect human liberty are swept aside.

Instead of the accuser proving the guilt of the accused, the accused is compelled to show cause why he should not be punished. The absolute power, in specific instances, of a judge sitting in chancery (which is the real name for equity) is gradually extended over the several fields of human activity, and a revolution is perfected. We then have despotic government by the judiciary in place of government of, for, and by the people.

This revolution has already progressed very far. It is depriving the workers of their rights as citizens by forbidding the exercise of freedom of speech, freedom of the press, freedom of assembly, and the right of petition, if, in the opinion of the judge, the exercise of these rights may work injury to the business of some corporation or trust. It is applicable to the worker to-day, and will inevitably be made applicable to the business man at a later period.

The progress of this revolution must be stopped.

We must return to government by law in all instances where the revolution has been successful.

This virus and poison has not only attacked the judicial branch of government, but has in several instances entered upon the legislative field, by making laws which may be enforced by equity process; that is, the judge is by law authorized to—

Disregard all accepted rules of procedure and of evidence; to

Dispense with jury trial and substitute instead of these safeguards of human liberty his own opinion of what is right.

It was with these serious thoughts in mind that labor's representatives submitted to the party in power—the Republican Party—in 1906 labor's bill of grievances, and respectfully urged that necessary legislation be enacted. Nothing was done.

Injunction after injunction was issued forbidding men to assist each other, to give information to each other, and to do in unison those things which it was the undisputed right of the individual to do for himself.

In the meantime the dispute between the Hatters' Union and Mr. Loewe, of Danbury, was in progress from one court to another, until it reached the United States Supreme Court, where is was decided that—

Organizations of working men and working women, for mutual aid and assistance, are combinations in illegal restraint of trade under the so-called Sherman antitrust law.

That anyone injured thereby may recover threefold damages from the organizations, and if they have not the means, then from individual members thereof. Between this law, enforceable by equity process and the extension of the use of the writ of injunction, the individual freedom of the worker to combine with others for mutual aid and protection is swept away and his rights as a citizen disregarded and denied.

For all these steadily growing, dangerous tendencies there is but one remedy—legislation by the people through their proper representatives. Again we appealed to Congress, and again our answer was a distinct and emphatic "no."

We drafted and caused to be introduced in Congress specific bills to stay and remedy the evil, but to no purpose.

Labor was not only given an emphatic "no," but it was coupled with a statement by candidate for Vice President, Mr. SHERMAN, accepted and approved by the majority of Congress, that his party fully

understood what was doing, and accepted all responsibility both for what it did and what it did not do.

It is no attack upon the judges to say that they are men with a fair average quality of human nature; that they are subject to the prejudices and passions of men. They can not divest themselves of their humanity by putting on the judicial ermine any more than can the king divest himself of his by putting on the crown.

Despotic power under the ermine is as dangerous as despotic power under the crown. To stay its progress, some remedy must be had, and we therefore appealed to the Republican convention at Chicago and were given the same answer in still more insulting language if that were possible. We asked for bread, and they showed us a whip, and in order to be certain that the whip will be effectually used the Republican Party nominated as its standard bearer Mr. William H. Taft, the originator and specific champion of discretionary government; that is, government by injunction. In passing, I may say that his nomination, under the circumstances, was logical. It would have been impossible for the party to find a more effective representative of its policy.

Labor's representatives then went to the Democratic Party. That party made labor's contention its own. It pledged its candidates for every office to those remedies which labor had already submitted to Congress. The standard bearer of the Democratic Party, Mr. William J. Bryan, entered fully into the essence of this struggle and declared that the real issue in this campaign is: "Shall the people rule?"

The Republican Party and its candidate stand for upholding and further extending into our country a despotic government vested in the judiciary.

The Democratic Party and its candidate stand for government by law vested in the people.

As an American citizen, in view of these facts, I have no choice—I have only duty. Duty to preserve with my voice, pen, and ballot that form of government for the preservation of which Lincoln said, "Men died at Gettysburg."

Human freedom and equality of all men before the law is the result of the struggle of the ages, and our holiest inheritance. This we must regain; this we must extend, so that it shall be a living, character-making, conduct-governing principle in American life.

Labor has been and will be accused of partisanship, but in performing a solemn duty at this time in support of a political party labor does not become partisan to a political party, but partisan to a principle.

As the campaign progresses, accusations, misrepresentations of all conceivable kind will come thick and fast. In answer to them all, I have but to say that men who have given a whole life's energy to the great cause of labor and who in all the years gone by have been found faithful, honest, and sincere are not likely to change their character all of a sudden. If we were desirous of either office or other emoluments, they could have been obtained with greater ease from the party in power.

I have said before and now say again that there is no political office in the gift of the American people, elective or appointive, that I would under any circumstances accept. Not that such offices could be lightly put aside by an American citizen, but that I believe I can do more for the ideas that I cherish and the work in which I am engaged, either as an official or as a member in the rank and file of the labor movement, and the threats of politicians to "burn brush fires" behind me wherever I may go; to "create rebellion" in the labor movement against me and bring about my defeat for the presidency of the Federation can have no influence upon my mind and can not alter my course. As workers and citizens we have our franchise; as citizens we must use it to protect and extend equality of all men before the law and secure individual liberty for all men.

And now, fellow workers and friends of human liberty, labor calls upon you to be true to yourselves and to each other, to stand faithfully by our friends and elect them, oppose and defeat our enemies, whether they be candidates for President, for Congress, or other offices, whether executive, legislative, or judicial.

Sincerely and faithfully, yours,

SAML. GOMPERS,
President American Federation of Labor.

LETTER OF PRESIDENT ROOSEVELT TO SENATOR KNOX.

WASHINGTON, *October 21, 1908.*

MY DEAR SENATOR KNOX: In your admirable speech of yesterday you speak of the action of Mr. Bryan and certain gentlemen claiming to be the special representatives of organized labor, foremost among them Mr. Gompers, to secure the support of laboring men for Mr. Bryan on consideration of his agreement to perform certain acts nominally in the interests of organized labor, which would really be either wholly ineffective or else of widespread injury not only to organized labor but to all decent citizens throughout this country. You have a peculiar right to speak on labor questions, for it was you, who, as Attorney General, first actively invoked the great power of the Federal Government on behalf of the rights of labor when for the first time in the history of the Government, you, speaking for the Department of Justice, intervened in a private lawsuit which had gone against the widow of a brakeman and by your intervention secured from the Supreme Court a construction of the safety-appliance act which made it a vital remedial statute, and therefore has secured to hundreds of crippled employees compensation which they would not otherwise have obtained.

LETTER FROM GOMPERS.

The daily papers of October 13 contain an open letter from Samuel Gompers, president of the American Federation of Labor, appealing to workingmen to vote for Mr. Bryan.

In that letter are certain definite statements which interest the wider American public quite as much as those to whom Mr. Gompers makes his appeal. These statements warrant all you have said in your speech, and they would warrant you in asking Mr. Bryan to say publicly whether Mr. Gompers states correctly the attitude of his party and himself on a subject that is of vital concern to every citizen, including every business man as well as every farmer and every laboring man, who looks to the courts for the protection of his rights.

Mr. Gompers in his letter asserts that the judiciary of this country is destroying democratic government and substituting therefor an irresponsible and corrupt despotism in the interests of corporate power, and he further makes clear that the means by which he believes this alleged despotism has been set up in the place of democracy is by the process of injunction in the courts of equity.

Mr. Gompers in his letter states that his appeal to the Republican convention at Chicago for remedy against the injunction was denied, and he then goes on to state not only that the Democratic Party promised a remedy, but promised him the particular remedy that he had already asked of Congress.

His words are:

"Labor's representatives then went to the Democratic Party. That party made labor's contentions its own. It pledged its candidates for every office to those remedies which labor had already submitted to Congress."

The last sentence in this quotation indicates very definitely the specific remedies to which Mr. Gompers understands Mr. Bryan's party has pledged itself.

His statement now makes perfectly clear an important plank in the Bryanite platform which has heretofore seemed puzzling to a vast number of earnest-minded, thinking people who are sincerely interested in the steady advance and the legitimate aspirations of labor, and who carefully read both platforms to know precisely what hopes each held out for the improvement of the condition of wage earners.

That plank reads as follows:

"Questions of judicial practice have arisen, especially in connection with industrial disputes. We deem that the parties to all judicial proceedings should be treated with rigid impartiality, and that injunctions should not be issued in any cases in which injunctions would not issue if no industrial dispute were involved."

REMEDY PROMISED.

This is the plank that promises the "remedy" against injunctions which Mr. Gompers asked of Mr. Bryan's party. In actual fact it means absolutely nothing; no change of the law could be based on it; no man without inside knowledge could foretell what its meaning would turn out to be, for no man could foretell how any judge would decide in any given case, as the plank apparently leaves each judge free to say when he issues an injunction in a labor case whether or not it is a case in which an injunction would issue if labor were not involved. Yet this plank is apparently perfectly clear to Mr. Gompers, and in his letter to his followers he indicates beyond question just what he understands it to mean. He asserts that he has the requisite inside knowledge. His statement that it was Mr. Bryan's party—for it was Mr. Bryan who dictated the platform—pledged itself "to those remedies which labor had already submitted to Congress" is a perfectly clear and definite statement.

The "remedies" which Mr. Gompers has already submitted to Congress are matters of record and the identification of his "remedy" against injunctions in labor disputes is easy and certain. This "remedy" is embodied in House bill No. 94 of the first session of the Sixtieth Congress, the complete text of which is hereto appended.

The gist of the bill, as can be seen by referring to the complete text, is this:

First. After forbidding any Federal judge to issue a restraining order for an injunction in any labor dispute, except to prevent irreparable injury to property or a property right, it specifically provides that "no right * * * to carry on business of any particular kind, or at any particular place, or at all, shall be construed, held, considered, or treated as property or as constituting a property right."

Second. It provides that nothing agreed upon or done by two or more parties in connection with a labor dispute shall constitute a conspiracy or other criminal offense or be prosecuted as such unless the thing agreed upon or done would be unlawful if done by a single individual.

The bill here described is not only the "remedy" that Mr. Gompers has "already submitted to Congress," but it is the one and only remedy which he and those associated with him in his present movement have announced that they will accept in the matter of his grievance against the courts on the injunction issue.

FEDERATION ON RECORD.

The counsel for the American Federation of Labor and Mr. Gompers, its president, are both on record to this effect.

At a hearing before the House Committee on the Judiciary the counsel for the American Federation of Labor on February 5, 1908 (as appears from the printed hearings), stated:

"The bill was considered by at least two sessions of the executive council of that organization and unanimously approved. It was considered by two of its national conventions—the two latest—and by them unanimously indorsed. And in the face of many propositions to amend it, in the face of many proposed substitutes, in the face of pressure from every direction, from high sources and sources not so exalted, the organization has stood by and is to-day standing by this bill without amendments."

Mr. Gompers himself in discussing this bill before the same committee on February 28, 1908 (as appears from the printed hearings), went on record as follows:

"Events have demonstrated clearly to my mind that there is only one bill before the committee that can at all be effective to deal with this abuse, with this invasion of human rights, and that is the Pearre bill."

Further on in the same page of the hearings, Mr. Gompers states:

"I will say this, that I think I will try to make my position clear that the American Federation of Labor has so declared itself that it must insist upon the principles involved in the Pearre bill, and that I explained as best I could the position of labor—that we would rather be compelled to bear the wrongs which we have for a longer period than to give our assent to the establishment of a wrong principle, believing and knowing that time would give the justice and relief to which labor—the working people—are entitled."

DEMAND OF GOMPERS.

This bill, then, and none other, represents exactly the relief that Mr. Gompers demands in the way of anti-injunction legislation; and if the statement in his letter is correct, this bill represents what Mr. Bryan and his party are pledged to in the matter of anti-injunction legislation.

The injunction plank in the Bryanite platform may sound vague and hazy, but there is nothing vague or hazy about this bill.

It is more than a bill; it is a program of the most fixed and definite kind; and if Mr. Gompers is correct this bill becomes, as it were, an authorized appendix to Mr. Bryan's platform, or a footnote explaining in detail the briefer and vaguer injunction plank in that platform.

Does Mr. Bryan accept it as such?

Mr. Bryan should state publicly whether he in fact accepts the principle of this bill, which is the official program of Mr. Gompers and those who stand with him.

Mr. Gompers announces publicly that Mr. Bryan's party has made this program its own. Is Mr. Gompers correct in this statement?

Either Mr. Gompers is mistaken as to what Mr. Bryan's party has promised him in this matter of anti-injunction legislation or those who

drafted his party's platform in their haste failed to make the promise so clear that the general public would understand it precisely as Mr. Gompers understood it.

Mr. Bryan failed in his letter of acceptance to discuss this labor plank of his party's platform. So far as I am aware he has failed to discuss it since.

There should be such discussion as a matter of common fairness, not only to labor, but to all citizens alike. On a question of such grave consequence the people are entitled to know where Mr. Bryan stands.

Mr. Taft has repeatedly explained exactly where he stands in this matter of regulating injunctions.

Are we not entitled to know with equal clearness exactly where Mr. Bryan stands?

Mr. Gompers's public statements as to what his party has promised make it imperative that Mr. Bryan declare himself.

This bill, to the principle of which he says Mr. Bryan is pledged, declares that the right to carry on a lawful business in lawful way shall not be regarded as a property right or entitled to the protection of a court of equity through the process of an injunction, and that the right to such protection, which admittedly now exists under the law, shall be taken away.

WHAT GOMPERS PLANNED.

The counsel for the American Federation of Labor in his argument before the House committee on February 5, at which Mr. Gompers himself was present, gave a very frank illustration of what he and Mr. Gompers perceived to be the consequences of that provision of this bill which says that the right to carry on business shall not be entitled to protection as a property right.

His words are: "Suppose that working men by some operation or proceedings in the community (let us say by violence or persuasion or picketing away from the premises) reduce those works to a state of utter helplessness and there was not a wheel moving nor a process in operation and this company had no help at all—that would be an interference with his right to do business, and for that I say he has no right to be protected by injunction."

Is Mr. Bryan in reality pledged to this point of view?

Will he definitely say, either in writing or in public address, whether he believes with Mr. Gompers that the protection heretofore afforded by the courts of equity to the right to carry on a lawful business in a lawful way is despotic power, and that the judges who exercise that power are irresponsible despots?

So far as the second section of this bill is concerned it is perfectly clear that it would legalize the blacklist and the sympathetic boycott carried to any extent. It would legalize acts which have time and again been declared oppressive, unjust, and immoral by the best and most eminent labor leaders themselves.

Does Mr. Bryan believe that Mr. Gompers, that he and that part of the labor movement that agrees with him, has the right morally, and should be given the right legally, to paralyze or to destroy with impunity the business of an innocent third person against whom neither he nor they have any direct grievance simply because the third person refuses to join with them aggressively in a labor controversy with the real merits of which he may be utterly unacquainted, because he refuses to class as his enemy any and every other employer whom they point out as their enemy, because he refuses merely upon their peremptory order to excommunicate some other employer by ceasing all business relations with him? The blacklist and the secondary boycott are two of the most cruel forms of oppression ever devised by the wit of man for the infliction of suffering on his weaker fellows.

DESPOTIC POWER.

No court could possibly exercise any more brutal, unfeeling, or despotic power than Mr. Gompers claims for himself and his followers in the legislation which would permit them without let or hindrance of any kind to carry on every form and degree of the secondary boycott.

The anthracite strike commission, as fair-minded and distinguished a body of men as ever passed judgment on an industrial question, thus refers to the secondary form of boycott—that is, the boycott of innocent third persons for refusing to take an aggressive part in a controversy with which they have no concern:

"To say this is not to deny the legal right of any man or set of men voluntarily to refrain from social intercourse or business relations with any persons whom he or they, with or without good reason, dislike. This may sometimes be unchristian, but it is not illegal. But when it is a concerted purpose of a number of persons not only to abstain themselves from such intercourse but to render the life of their victim miserable by persuading and intimidating others so to refrain such purpose is a malicious one, and the concerted attempt to accomplish it is a conspiracy at common law and merits and should receive the punishment due to such a crime."

The commission further states that this boycott can be carried to an extent "which was condemned by Mr. Mitchell, president of the United Mine Workers of America, in his testimony before the commission, and which certainly deserves the reprobation of all thoughtful and law-abiding citizens."

Does Mr. Bryan agree with Mr. Gompers that all existing legal restraint on the enforcement of every degree of the boycott should be withdrawn, that the industrial excommunication of the innocent merchant who refuses to render unquestioned obedience to the orders of Mr. Gompers should be legalized and encouraged, or does he believe with us and with Mr. Mitchell and other labor leaders who differ with Mr. Gompers in this matter that this form of the boycott is morally wrong, that labor at war should fight with its enemies and respect the rights of neutrals, that innocent third parties should not be coerced into taking sides in industrial disputes to which they are in no sense parties, under penalty of having their business attacked and destroyed?

Mr. Taft is perfectly definite on this proposition.

Where does Mr. Bryan stand.

The citizen who votes for or against Mr. Taft on this proposition does so with his eyes open and with a clear understanding from Mr. Taft himself of his position. He has frankly discussed this subject time and again with workingmen themselves, both in this campaign and prior to his nomination. He has been willing to express his position clearly and to assure workingmen that to protect them in their rights he is willing to go to the limits of what he considers justice, but that he will not go further. His definition of justice to labor does not, as we understand it, include either of the principles contained in Mr. Gompers's program, as set forth officially in this bill.

Does Mr. Bryan disagree with Mr. Taft on these propositions?

Will he state publicly, definitely, categorically, whether he accepts the program outline in this bill, as Mr. Gompers in his letters has assured the public that he does?

TRIBUTE FROM BRYAN.

Mr. Bryan's party platform paid a high tribute to our courts of justice. It stated:

"We resent the attempt of the Republican Party to raise a false issue respecting the judiciary. It is an unjust reflection upon a great body of our citizens to assume that they lack respect for the courts."

The "great body of our citizens" to whom this platform refers is admittedly Mr. Gompers and his followers.

Mr. Gompers, now Mr. Bryan's open and avowed ally, has in the better quoted attacked the Federal courts in unmeasured terms of reproach because by a long line of decisions the equity courts have refused to make an outlaw of the business man, because his right to carry on a lawful business under the peace of the law has been protected by the process of injunction, because, in a word, one of the most vital and most fundamental rights of the business world, the right of a business man to carry on his business, has been sustained and not denied by the processes of the courts of equity. This sweeping attack of Mr. Gompers upon the judiciary has been made in a frank and open effort to secure votes for Mr. Bryan.

Are these attacks made with Mr. Bryan's consent?

Do they meet with his approval?

Does he indorse them or does he repudiate them?

Mr. Bryan has frankly questioned Mr. Taft during the progress of this campaign, and very properly so, and has asked him to make clear his personal stand on public matters upon which the public was entitled to be enlightened.

In turn, with equal frankness and with equal propriety, Mr. Bryan should be asked to break a long-continued silence and make definite and certain his own position in regard to a matter that concerns not only business men and every decent law-abiding citizen, whether a wageworker or not, just as much as it concerns Mr. Gompers and that part of organized labor that stands with him.

There is no need of generalities, of vague expressions of sympathy for labor. Let Mr. Bryan simply confine himself to the anti-injunction plank of his own platform and tell us publicly, definitely, and clearly whether he accepts or rejects the statement of Mr. Gompers that this plank pledges him to the principles of the bill for which Mr. Gompers stands and whether if elected he will endeavor to have this proposal enacted into the law. This is asked honestly in the interest of that large voting public which believes sincerely in the promotion of every legitimate right and interest of labor, but which believes also that from the standpoint of the best interest of labor it neither requires nor is entitled to more than justice, and that the right to destroy business should not be formally recognized in the law of the land.

REALIZES RIGHT TO SPEAK.

I feel that I have the right to speak frankly in this matter, because throughout my term as President it has been my constant object to do everything in my power, both by administrative action and by endeavoring to secure legislative action, to advance the cause of labor, protect it from unjust aggression and secure to it its legitimate rights. I have accomplished something; I hope to accomplish more before I leave office; and I have taken special and peculiar interest in Mr. Taft's candidacy because I believe that of all the men in this country he is the man best qualified for continuing the work of securing to the wageworkers of the country their full rights. I will do everything in my power for the wageworkers of the country except to do what is wrong. I will do wrong for no man, and with all the force in my power I solemnly warn the laboring man of this country that any public man who advocates doing wrong in their interests can not be trusted by them; and this whether his promise to do wrong is given knowing that it is wrong or because of a levity and lack of consideration which make him willing to promise anything without counting the cost if thereby support at the moment is to be purchased.

WILL FIGHT ABUSES.

Just as I have fought hard to bring about in the fullest way the recognition of the right of the employee to be amply compensated for injury received in the course of his duty, so I have fought hard and shall continue to fight hard to do away with all abuses in the use of the power of injunction. I will do everything I can to see that the power of injunction is not used to oppress laboring men. I will endeavor to secure them full and equal justice. Therefore in the interest of all good citizens, be they laboring men, business men, professional men, farmers, or members of any other occupation, so long as they have in their souls the principles of sound American citizenship, I denounce as wicked the proposition to secure a law which according to the explicit statement of Mr. Gompers is to prevent the courts from effectively interfering with riotous violence when the object is to destroy a business, and which will legalize a blacklist and the secondary boycott, both of them the apt instruments of unmanly persecution.

But there is another account against Messrs. Bryan and Gompers in this matter. "Ephraim feedeth on wind." Their proposed remedy is an empty sham. They are seeking to delude their followers by the promise of a law which would damage this country solely because of the shown moral purpose that would be shown by putting it upon the statute books, but which would be utterly worthless to accomplish its avowed purpose. I have not the slightest doubt that such a law as that proposed by Mr. Bryan would, if enacted by Congress, be declared unconstitutional by a unanimous Supreme Court—unless indeed Mr. Bryan were able to pack this court with men appointed for the special purpose of declaring such a law constitutional. I happen to know that certain great trust magnates have announced within the past few weeks, in answer to the question as to why they were openly or secretly favoring the election of Mr. Bryan, that the laws that Mr. Bryan proposed, including especially this law, would be wholly ineffective, because the court would undoubtedly throw them out and that the promises to enact them could, therefore, be safely disregarded.

* * *

Sincerely, yours, THEODORE ROOSEVELT.

EDITORIAL FROM AMERICAN FEDERATIONIST.

PRESIDENT ROOSEVELT'S ATTACK ON LABOR ANSWERED BY SAMUEL GOMPERS.

So President Roosevelt has again thrust himself into the campaign. He not only becomes bitterly partisan, but must needs attempt to throw the weight and influence of his great office in the scales against the interests and equal rights with all other citizens to which the workers of our country aspire and are justly entitled. He makes a direct and specific attack upon labor.

The pretense that the attack is upon me is too thinly veiled to deceive anyone. He strikes over my shoulder at the hearts of the great rank and file of the workers and other liberty-loving citizens of our country.

So far as I am concerned, I have neither the inclination nor the desire to bask in the sunlight of President Roosevelt's "benevolent assimilation," by which he placates some, by the big stick browbeats others, and by his sophistry hopes to fool the masses into supporting Injunction Judge Taft.

President Roosevelt says that Senator Knox has a peculiar right to discuss the principles involved in injunctions, because he as Attorney General prosecuted a civil suit for damages to an injured workman. That Senator Knox was the special counsel of the Pennsylvania Railroad and of the United States Steel Corporation would indeed qualify him to discuss the injunction abuse, but certainly only from the viewpoint of the friends of corporations who profit by the abuse of the injunction writ, as it brings advantage and profit to corporate greed and power.

But does President Roosevelt imagine that the workers of our country will accept his credential to Senator Knox as the spokesman of labor's rights in preference to those whom the great rank and file have themselves chosen as the champions and defenders of their interests and rights? No, indeed. In this contest, knowing the "peculiar" interest which the President manifests in his candidate, will the masses accept even him as the infallible judge of what are the principles of equal rights and liberty for which they contend?

But to consider at this time the subject of Senator Knox is of lesser importance, inasmuch as the President has thrust himself across the path, and I therefore propose to answer his diatribe of abuse and misrepresentation.

If the courts have not invaded human liberty, if they have not undertaken to protect corporate interests to the detriment of the people, why did President Roosevelt characterize Judge Grosscup's reversel of Judge Landis's $29,000,000 fine upon the Standard Oil Trust as "a gross miscarriage of justice"? Why did he, in his special message to Congress January 31, 1908, say:

"It is all wrong to use the injunction to prevent the entirely proper and legitimate actions of labor organizations in their struggle for industrial betterment, or under the guise of protecting property rights unwarrantably to invade the fundamental rights of the individual. It is futile to concede, as we all do, the right and the necessity of organized effort on the part of wage earners and yet by injunctive process to forbid peaceable action to accomplish the lawful objects for which they are organized and upon which their success depends." And further: "If some way of remedying the abuses is not found, the feeling of indignation against them among large numbers of our citizens will tend to grow so extreme as to produce a revolt against the whole use of the process of injunction."

In the same message he says he "considers it most unwise to abolish the use of the process of injunctions." The veriest tyro of a layman, much less one familiar with the injunction process, in his wildest dreams never suggested the abolition of the injunction process. It is not its abolition that labor desires but the restoration to its beneficent use from which it has been ruthlessly diverted; from the protection of property rights to the invasion of personal freedom.

I cite this to show the utter confusion of the entire matter of injunctions in Mr. Roosevelt's mind. In the one message he states a fundamental principle, then makes an absurd deduction, and in his attack on me goes back on it all.

When corporations secure injunctions against workmen with whom they are engaged in a dispute, the injunctions are based upon the theory that the carrying on of their business is a property right; that those workmen (strike breakers) whom they may have secured are necessary to carry on their business and that they have some sort of property right in those strike breakers, and the striking or locked-out workmen are enjoined from interfering, inducing, or persuading the strike breakers from leaving the employment of the corporations on the ground that such interference, inducements, or persuasion is an interference with their property and property rights.

Indeed, in the injunctions sought by the corporations, they further allege, quoting from one, "It is impossible for the plaintiff to obtain workmen, without whose assistance the property of the petitioners becomes utterly valueless for the purpose of their trade." When this claim was considered by the higher courts of Great Britain, all the judges agreed that the lower court had exaggerated its function and jurisdiction in issuing such an injunction.

The decisions of the higher courts of Great Britain were totally disregarded, and the decision of the lower court which was reversed accepted as the basis for the issuance of the injunctions in our country. The injunctions issued by Judge Taft, Judge Ricks, Judge Jackson, Judge Dayton, Judge Gould, and others are based upon the theory that along with the ownership of the mine, factory, workshop, transportation, a certain vested right exists in so much labor or patronage as is needed to make the operation profitable, and that this constitutes a form of property or property right in the laborer.

The relations between employers and employees are personal relations as distinct from property relations; that the rights of either party are personal rights, as distinct from property rights, no intelligent man dare dispute; and yet the courts, in extending their equity power, step in by the injunction process and filch from the toilers, because they are toilers, their rights as citizens and freemen.

Mr. Roosevelt has quoted a portion of the Pearre injunction bill, and I ask any fair-minded citizen to compare it with the provisions of the trades-dispute act passed by the British Parliament less than two years ago. Its main provisions are:

"An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

"It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

"An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills.

"An action against a trades-union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

"Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the trades-union act, 1871, section 9, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute."

Surely Mr. Roosevelt would not pretend to say that the monarchy of Great Britain would confer upon the workers the lawful right to exercise "brutal, unfeeling, or despotic power"; and yet the provisions of the Pearre bill and the Wilson bill are not as broad or comprehensive in scope as the British trades-dispute act.

The mere fact that Mr. Roosevelt denounces a proposition as wicked does not so constitute it. Time and circumstances and party obligation have persuaded him to modify his judgment and his utterances. Surely it must bring unction to him to find his unwarranted attack on me so thoroughly appreciated by the New York Sun, which characterizes him for his past utterances in as severe language as that with which he now attacks me. The New York Sun charges him with apostasy to his record and welcomes him into the galaxy of CANNON, Littlefield, Van Cleave, and others of the same sort.

It is the purpose of the opponents of labor to vilify the labor movement through me, and Mr. Roosevelt now joins the chorus upon the pretext that I have attacked the Federal courts. As a man and as a citizen, I have nothing to retract, but I insist that despite great provocation I have always expressed my views and criticism—perhaps in strong, yet respectful, language. If anyone desires to look for criticism and arraignment of the Supreme Court of the United States, let him read the dissenting opinion of Justice Harlan in the Barry Baldwin *v.* Robert Robertson case. Let him read the opinions of the four dissenting justices when the Supreme Court declared the law limiting the hours of bakers in the State of New York to 10 unconstitutional. Let him read the four dissenting opinions of the Supreme Court's decision when the five justices declared the income tax unconstitutional. No severer indictments were ever expressed by any citizens of our country against the invasions of the people's rights and liberties.

But quite independent of the dissenting justices' opinions and arraignments, it is not amiss to quote the expressions of others equally qualified. Men of highest renown in the legal profession; men whose minds have remained unperverted by the glitter and grind of corporate greed and power; men who stand for justice and who apprehend the dangers to our Republic if personal, discretionary, and arbitrary government is permitted to take the place of government by law.

In October, 1897, Hon. W. H. Moody, now Justice of the United States Supreme Court, said:

"I believe in recent years the courts of the United States, as well as the courts of our own Commonwealth (Massachusetts), have gone to the very verge of danger in applying the process of the writ of injunction in disputes between labor and capital."

Hon. Thomas M. Cooley, president of the American Bar Association, said:

"Courts, with their injunctions, if they heed the fundamental law of the land, can no more hold men to involuntary servitude for even a single hour than can overseers with the whip."

Gov. Pingree, of Michigan, said:

"I consider government by injunction, unless stopped, the beginning of the end of liberty. Tyranny on the bench is as objectionable as tyranny on the throne. It is even more dangerous, because judges claim immunity from criticism, and foolish people acquiesce in their claims."

Judge M. F. Tuley, of the appellate court of Illinois, used these words:

"Such use of injunction by the courts is judicial tyranny, which endangers not only the right of trial by jury but all the rights and liberties of the citizens."

Gov. Sadler, of Nevada, said:

"The tendency at present is to have the courts enforce law by injunction methods, which are subversive of good government and the liberties of the people."

Hon. J. H. Benton, jr., of Massachusetts, said:

"The courts have gone too far. It is impossible for them to go on in the course they have taken and retain the confidence of the people or preserve their own powers. It is idle to say that the popular complaint on this subject means nothing, or that, as one judge has said, 'nobody objects to government by injunction except those who object to any government at all.' It does mean much. It means that the courts have, in the judgment of many of the most intelligent and thoughtful citizens, exceeded their just powers; that they have, by the so-called exercise of the equity power, practically assumed to create and to punish offenses upon trial by themselves without a jury, and with penalties imposed at their discretion. * * * The people will not, and they ought not to, submit to decisions like those in the Northern Pacific and Ann Arbor cases (Taft's injunction)."

Prof. F. J. Stimson, of Harvard, one of the greatest legal authorities, in his new work on "Federal and State Constitutions," after citing many authorities, says:

"These are sufficient to establish the general principle that the injunction process and contempt in chancery procedure, as well as chancery jurisdiction itself, is looked on with a logical jealousy in Anglo-Saxon countries as being in derogation of the common law; * * * taking away the jurisdiction of the common-law courts and depriving the accused of his trial by jury."

Judge John Gibbons, of the circuit court of Illinois, declared that:

"In their efforts to regulate or restrain strikes by injunction, they (the courts) are sowing dragons' teeth and blazing the path of revolution."

In the last edition of his great book, that legal authority, High, "On Injunctions," says:

"Equity has no jurisdiction to restrain the commission of crimes or to enforce moral obligations in the performance of moral duties; nor will it interfere for the prevention of an illegal act merely because it is illegal, and in the absence of any injury to property rights, it will not lend its aid by injunction to restrain the violation of public or penal statutes or the commission of immoral or illegal acts."

I have quoted from these legal celebrities not with the hope of being able to convert the judgment of Mr. Roosevelt, but I have done so simply to conclusively prove to him how "wicked, brutal, and unfeeling" are these jurists and legal authorities. Mr. Roosevelt has placed me in good company.

Might I not recall Jefferson's prophecy, when he said: "It has long been my opinion that the germ of dissolution of our Federal Government is in the constitution of the Federal judiciary, an irresponsible body, working, like gravity, by day and by night, gaining a little to-day and a little to-morrow, and advancing its noiseless step like a thief over the field of jurisdiction until all shall be usurped."

Of course, everyone knows that the President "strongly" urged every measure which he advocated, and then accepted what his political opponents in his own party chose to give him. It is general knowledge that he had a more liberal platform prepared for adoption by the Republican convention at Chicago and then accepted what they doled out. All know that the nomination of Mr. SHERMAN for the Vice Presidency was concocted by Senator Burrows and "Genial Uncle JOE" CANNON as a slap in the face to Mr. Roosevelt; but the President, because his injunction judge, Mr. Taft, has been nominated for the Presidency, now not only swallows the whole pot pourri, but must needs directly and indirectly attack me in the fight which my fellow workers and I are making in defense of equality before the law of the men of labor with all other citizens and for the establishment of human freedom.

Pray, what has transpired to have induced the President to change from a position of, at least, apparent friendship to bitter, indefensible antagonism? The Pearre injunction bill, which Mr. Roosevelt attacks, has been before several Congresses without a word of criticism or comment from him.

It has been my pleasure to have often had the privilege of discussing with President Roosevelt a number of the fundamental questions of right, justice, and moral and social uplift. Included in these discussions were the invasions of personal rights and human liberty by the courts in the injunction abuse. It is true that the President has not always fully agreed with my contentions, but he has never until the publication of his latest utterance hinted, much less charged, that anything which I advocated was lawless, unfeeling, despotic, brutal, or wicked; and yet the rights for which the workers of our country contend and which, as best I can, I defend and advocate have been as *well known to him* during the past several years as they are when he now so unjustifiedly undertakes to misrepresent my work, my motives, and my law-abiding citizenship. Surely that opinion was not always entertained by the President, as the following will show:

In the February, 1908, issue of the American Federationist I published the chapter "Some Equivocal Rights of Labor," from Hon. George A. Alger's book, "Moral Overstrain." The chapter of the book is as keen criticism of the courts of the country in their decisions affecting the rights, interests, and liberty of the workers as anything I have ever said or written. I quote this one brief paragraph of Mr. Alger's article:

"Stated as concretely as possible, the principal difference between the working people and the courts lies in the marked tendency of the courts to guarantee to the workman an academic and theoretic liberty, which he does not want, by denying him industrial rights, to which he thinks he is ethically entitled. His grievance is that in a multiplicity of instances the courts give what seems to him counterfeit liberty in the place of its reality."

Just before publishing that article I sent the following letter to the President:

WASHINGTON, D. C., *January 25, 1908.*

MY DEAR MR. PRESIDENT: I am greatly indebted to you for calling to my attention the chapter entitled "Some Equivocal Rights of Labor" in George A. Alger's "Moral Overstrain." I was so much impressed with it that I requested and secured permission from the publishers to republish this chapter in the American Federationist. It appears in the February issue, and I am taking the liberty of sending you herewith a copy of that issue, which you will please accept with my assurances of high regard.

Very sincerely, yours,

SAMUEL GOMPERS,
President American Federation of Labor.

To THEODORE ROOSEVELT,
President of the United States.

To which I received the following reply:

THE WHITE HOUSE,
Washington, January 27, 1908.

MY DEAR MR. GOMPERS: You may be amused to know that I have sent copies of the "Moral Overstrain" to Justices Day and McKenna. I am glad that you were able to use it in the American Federationist, and thank you for sending me the copy of the magazine.

Sincerely, yours,

THEODORE ROOSEVELT.

To Mr. SAMUEL GOMPERS,
President American Federation of Labor, Washington, D. C.

President Roosevelt quotes a statement made by the Hon. T. C. Spelling before the Judiciary Committee of the House. Without expressing an opinion at all up the quotation, it may not be uninteresting to call attention to the fact, without disrespect to Mr. Spelling, that he is not an attorney for the Federation now, and that very soon after his utterance, which President Roosevelt quotes, he was appointed as an expert for the Interstate Commerce Commission and later appointed in the Department of Justice; that a day or so after his latest appointment Attorney General Bonaparte gave out a statement to the press that he had appointed an expert on the law of corporations, and Mr. Spelling proudly showed me the interview.

Surely Mr. Roosevelt does "Mr. Mitchell and other labor leaders" an injustice when he say that they differ from me in the matter of the Pearre and the Wilson bills or the principles upon which they are based. Mr. John Mitchell, Mr. Frank Morrison, and I are now on trial to show cause why we should not be sent to jail because we exercised our constitutional rights, having violated no law of State or Nation. Will the President publicly justify Justice Gould's injunction and the contempt proceedings to send Mitchell, Morrison, and me to jail on the grounds for contempt which are put forward by the Buck's Stove & Range Co. under that injunction? The injunction issued by Justice Gould is based upon injunctions issued by Judge Taft, and Judge Taft's language is quoted by Justice Gould.

The fact of the matter is that President Roosevelt, having made Injunction Judge Taft the candidate of the Republican Party for President, and seeing that the "labor vote," which so often has been corralled, diverted, and perverted by the politicians, is now aroused and determined to deliver its own vote, that the toilers will not be cajoled, deceived, or browbeaten, has become desperate and angry, and in his anger, by the worst exhibition of demagogism, tries to instill into the employers and business men the fear that their property and business are in danger if a "square deal," implied by equality before the law and human freedom, are accorded to the workers with all other citizens. It is an exhibition of impotent rage and disappointment and an awful descent from the dignity of the high office of the President of the United States. No one but himself will be deceived as to the purpose of Mr. Roosevelt.

The workers and liberty-loving citizens are aroused as never before since 1861. The "Battle Cry for Freedom" is again taken up. Then it was for the Union and the abolition of black slavery; to-day it is for the Union, equal rights and freedom for all.

The gentleman from Pennsylvania [Mr. MOON] has undertaken to show that this measure is unconstitutional, because it is an invasion by the legislative branch of the Government with the inherent rights of the judiciary, which, he asserts, is a coordinate branch of the Government.

The judicial branch of our Government has no inherent rights. The only rights which it has are those specifically granted by the Constitution, or necessarily implied in such grants. Even in the determining of those questions the legislative branch of the Government was made supreme by the Constitution itself whenever it sees fit to exercise that supremacy. That fact becomes obvious when you realize that the power of impeachment was placed in the hands of Congress with no power placed anywhere to review or reverse its decisions.

An equal branch does not have power and jurisdiction over an equal branch of the Government. The superior branch of the Government has power and jurisdiction over the inferior branch, and the very fact that the power to impeach was placed in the hands of the legislative branch of the Government makes the legislative branch of the Government supreme.

With regard to the constitutionality of this measure, which has been attacked, I wish to say this: That, in my judgment, Congress has the power to define the jurisdiction of all courts on all questions which may come before the courts, except in so far as jurisdiction has been specifically granted by the Constitution itself; that on all other questions of jurisdiction the Congress has the power to determine and, by the impeachment process, to which I have just referred, the power to enforce its determination as to what the jurisdiction shall be. It has exercised that power on many occasions. It has created courts and given to those courts certain jurisdiction, and no jurisdiction beyond that which was specifically stated in the law creating the court.

If the contention be correct that the power of our judiciary extends to all cases in law and equity and the legislative branch of the Government can not change that condition, then the moment you create a Court of Claims or the moment you create a Commerce Court or the moment you create any other court that court would have entire jurisdiction in law and equity, and there would be no power on the part of Congress to limit the jurisdiction. But Congress has exercised the power of limiting the jurisdiction of courts, and, so far as I am aware or have been informed, there has been no power that has undertaken to say that Congress has not the right to determine what the jurisdiction of the courts it created should be. Now, if it has that power with the creation of a Court of Claims or a Commerce Court or any similar court, it has the same power with regard to our equity courts, and has the right to determine what their jurisdiction shall be and to what matters their jurisdiction shall extend. It has the right to say that their jurisdiction shall extend to certain things and shall not extend to certain other things, and, among others, it has the right to say that it shall not extend to the issuance of injunctions under certain terms and conditions.

It is asserted in circulars that have been sent to every Member of this House, and by Members in this House, that this bill undertakes to legalize the boycott; that it undertakes to legalize picketing, and because it undertakes to do that they are opposed to the measure.

This bill does not legalize the boycott or picketing. It does not deal with the question of the legality of either of them. What it does do is to prevent the equity court from stepping in in a case of peaceful picketing, or stepping in in the case of a boycott, and by the writ of injunction undertaking to adjudicate it. There has been a great deal of criticism of the use of the right to boycott by workmen in their trade disputes, and for that reason some men are opposed to a proposition that prevents the equity court from stepping in with the writ of injunction to prevent a boycott.

But, Mr. Speaker, I want to say to this House now that the boycott itself lies at the very foundation of our moral code, and if you take away the boycott, if you wipe out the boycott, your moral code itself falls. One of the first things that we teach our children, one of the first things that we were taught ourselves, is to shun evildoers; avoid evil communications; boycott those who are bad. There is no inherent wrong in the boycott. On the contrary, it is generally good; but there may be cases in which the boycott is wrong. There may be cases under which the boycott would work an injustice on some one, and if there are such circumstances they should be specified in the law and the law courts should deal with the violation of them and not the equity courts. [Applause.]

The SPEAKER. The time of the gentleman from Pennsylvania has expired.

Mr. CLAYTON. Mr. Speaker, I yield two minutes to the gentleman from Colorado [Mr. MARTIN].

Mr. MARTIN of Colorado. Mr. Speaker, that there are stranger things than are dreamed of in your philosophy, gentlemen, was illustrated in the House of Representatives to-day, when, during the debate on the pending anti-injunction bill, the Speaker's chair was temporarily occupied by a Member whose service in the ranks of labor was terminated by a Federal injunction, and not only that, but by the most noted of the injunctions which served to make government by injunction an issue in this country, and resulting in the pending legislation. I refer to the Debs injunction.

I want to congratulate the workingmen of the United States upon the fact that after 20 years of agitation the Congress of the United States is to-day taking the first open practical step to settle the issue of government by injunction by throwing about this kingly judicial power certain safeguards and forbidding its use against certain acts which will lead to its disuse in labor controversies. When injunctions are not so readily issued they will not be so readily asked for.

The same thing will be true of the contempt bill, reported favorably by the Committee on the Judiciary, providing for trials by jury in cases of constructive contempt. There will not be so many such contempts.

I want also to congratulate the Judiciary Committee of the House of Representatives and the Democratic Party upon the courage, the honesty, and the promptness with which its official representatives at their first opportunity have redeemed this pledge made by the Democratic Party to the toilers of the Nation in its national platform 16 years ago, and which it has repeated in every national platform since that time, the platform of 1908 containing the following declaration upon the subject of labor and injunctions:

LABOR AND INJUNCTIONS—DEMOCRATIC PLATFORM.

Experience has proven the necessity of a modification of the present law relating to injunctions, and we reiterate the pledge of our national platform of 1896 and 1904 in favor of the measure which passed the United States Senate in 1896, but which a Republican Congress has ever since refused to enact, relating to contempts in Federal courts and providing for trial by jury in cases of indirect contempt.

Questions of judicial practice have arisen, especially in connection with industrial disputes. We believe that the parties to all judicial proceedings should be treated with rigid impartiality, and *that injunctions should not be issued in any cases in which injunctions would not issue if no industrial dispute were involved.*

A more faithful compliance with a platform pledge in both letter and spirit will hardly be afforded by the annals of Congress than the bill under consideration measured by the above declaration. It is true that the bill is not all that some of us would like and that some of us would ask, but it is more than many would give and, as one who has had bitter practical experience in the matter of government by injunction, I shall be well pleased and shall consider it a field day for the workingmen of America when so good and fair a measure as the pending bill finds its way upon the statute books of the United States.

NECESSITY FOR INJUNCTION LEGISLATION.

Mr. Speaker, in this debate some eloquent eulogies have been passed upon the courts of this country. It is not my purpose to place in the record of this debate a single sentence that would abate one jot or tittle of respect for the courts or obedience to the law and its orderly processes. When the question of my own obedience to the process of the courts was put to the judicial test and that, too, by the court out of which it issued, it is one of the proud and lasting recollections of my life that it was decided, even in a time of great public excitement, when the scales of justice, held in the hands of a single man, might well have tipped the other way and have placed an indelible stain upon my name as a law-abiding American citizen—it is, I say, my proud and grateful recollection, under these circumstances, that I, young in years, immature in judgment, and surrounded by conditions of great provocation and excitement, had yielded clear and absolute obedience to the law, and not only to the law, but to the orders of the court, which were based upon false and ex parte affidavits and issued without notice or a day in court to those whose rights as American citizens, whose liberties, whose future good name and welfare were to be thus imperiled.

But others, I am sorry to say, equally deserving, were not equally fortunate, and I could recite individual instances of gross injustices, which, after the lapse of 18 years, I can hardly recall with composure. Gentlemen opposing this legislation have said on the floor and have said in their report that not a single instance of "too ready issuance of injunctions"—I quote from the minority report—"not a single case upon which the opinion of the majority could be founded."

It was pointed out in reply by majority members of the committee that the books were full of cases. But there are cases not to be found in books. There are cases of these abuses to be found in human lives in every community throughout the United States; cases which led to a nation-wide agitation for reform in the issuance and use of injunctions in labor disputes; cases which made the abuse of the writ of injunction an issue in national politics, earning for it the significant name of "government by injunction," and of which both great political parties had to take cognizance, and one of which, the Republican Party, throughout its entire 16 years of undisputed control of the National Government in all its departments refused to frame or report or in any manner act upon any measure whatsoever to remedy the evil. And yet to-day, when the other great party, the Democratic Party, seizes upon this, its first opportunity to redeem the pledges it has been making during these 16 years of Republican inactivity, we find the reactionary leaders of the Republican Party which during its long period of power had throttled and suppressed this and other measures looking to the welfare of the workingmen of America deserted by their own following, so that out of their membership of 162 in this body they are able to muster but a pitiful handful in opposition to this bill. Only 31 Republicans and no Democrats voted against the bill on final passage.

Apparently the minority members of the Judiciary Committee, six out of seven of which signed the minority report against the bill, not only do not represent their own party sentiment on this question, but are too shortsighted to see their own inconsistencies.

The standpat leaders, like voices from the tombs, some of them just fresh from repudiation at the hands of their own party in the primaries, stand upon the floor of the House denouncing this measure as the death knell of the courts and constitutional government as though they really represented anybody but themselves.

GROSS INCONSISTENCY OF MINORITY MEMBERS.

After saying that the majority did not produce a single instance of abuse of the injunctive power, and I quote the language of the report as follows:

According to the report of the majority of this committee, this bill intends to correct "the too ready issuance of injunctions, or the issuance without proper precautions or safeguards." If the report is predicated upon the "too ready issuance of injunctions," it is singular that it does not disclose a single case upon which the opinion of the majority could be founded. We are well aware of the charges iterated and reiterated before congressional committees alleging abuses in the issuance of injunctions. We have not found any more evidence to support them in the past than we now find in the report of the committee.

They admitted in the following paragraph their willingness to correct the abuse which they say does not exist in the following language:

The minority Members have at all times been willing to assent to a rational proposal to further safeguard the issuance of injunctions against even the possibility of abuse, and have introduced a bill for that purpose.

That is to say there is no known case of abuse of the writ of injunction; but because of the possibility that such a case may arise in the future the minority have introduced a bill to safeguard against even this conjectural danger. As this same minority was a majority in the last Congress and did not undertake to report any such bill, it must follow that even the conjectural possibility of abuse referred to in their report must be of very recent origin, so recent, possibly, as their overwhelming repudiation at the polls in the last national election for the gross betrayal of this and other pledges made by their party to the American people.

Another inconsistency in the minority report is its reliance upon the English practice in support of its contention that the courts should retain the power to issue *temporary restraining orders* without notice. It may be remarked in passing that the principal difference between *temporary restraining orders* and *preliminary injunctions* is a mere jugglery of terms. Indeed, in practical effect, and so far as results frequently are concerned, *permanent injunctions* might be added to the list. It has been well said by members of the majority in debate, and it was expressed with singular felicity by the distinguished gentleman from West Virginia [Mr. DAVIS], that frequently the issuance of a *temporary restraining order* determined the entire issue in favor of the employer. In other words, the issuance of the *temporary restraining order* was in itself sufficient to break the back of the strike. American workingmen are inherently law-abiding. They fear and respect the power of the courts, and once that power is invoked against them dismay seizes upon their ranks and the weaker of them invariably capitulate, to the undoing of the stronger of them. The man

who does not know this does not know enough about the life and the conditions of labor to legislate upon the subject.

NO GOVERNMENT BY INJUNCTION IN ENGLAND—ENGLISH LAWS.

But while gentlemen of the minority rely upon the English practice of issuing temporary restraining orders without notice or hearing, they repudiate the acts of the British Parliament exempting organizations of labor from the English conspiracy laws; and when it is pointed out to them that the provisions of the pending bill which they consider the most objectionable were taken bodily from the statutes of England, they reply that while this is true, yet, to use their own language—

The peculiar privileges conferred upon trades-unions by the English act of 1906 are accompanied by disabilities and criminal provisions of so drastic a nature that if they were offered as any part of the legislation of this country we should deem it our duty to oppose them in the interest of all workingmen.

It may be noted, however, that while the leaders of organized labor in the United States have been convicted and sentenced to terms of imprisonment for alleged violations of the writ of injunction, the leaders of organized labor in England have not similarly suffered either under English judicial processes built up by the courts—court-made law or by English statutes.

It may be noted, too, that government by injunction is not and never has been an issue in England, although England is almost purely an industrial nation.

I shall insert at the end of my remarks not only the English act of 1906 just refered to, but the two acts of which it is amendatory, to wit, the trade-union act of 1871 and the trade-union act amendment of 1876. The three acts follow in the order of time.

I shall not discuss them except to point out that by sections 2 and 3 and succeeding provisions of the act of 1871 trades-unions were specifically exempted from the conspiracy laws, so that for the past 41 years members of trades-unions in England could not be criminally prosecuted for the very acts for which Samuel Gompers, Frank Morrison, and John Mitchell have been sentenced to pay heavy fines and suffer long terms of imprisonment, and could not be sued civilly and mulcted in treble damages as in the case of the Danbury hatters, whose very homes have been levied upon to pay the damages secured against them in that proceeding, the legality of which has been sustained by the Supreme Court of the United States as within the provisions of the Sherman antitrust law.

SHERMAN ANTITRUST LAW A FAILURE.

The Sherman antitrust law was enacted to protect labor from the unjust exactions of capital, but thus far it has only succeeded in protecting capital from the just demands of labor.

No "captain of industry," no "malefactor of great wealth," no representative of the "predatory interests" has yet had to appear before the Supreme Court of the United States to defend himself against a sentence of imprisonment for violating the Sherman antitrust law; no corporation has had to appear before the Supreme Court of the United States to defend itself against a judgment for treble damages.

Labor has had to do both of these things. These facts are significant. These facts throw light upon the agitation for judicial reform in this country.

Section 1 of the amendment of 1906 declares that—

an act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable—

Which is substantially the same as the declaration in the Democratic national platform of 1908 that—

injunctions should not be issued in any cases in which injunctions would not issue if no industrial dispute were involved.

The meaning of these provisions is the same.

ACTS WHICH CAN NOT BE ENJOINED.

Certain acts may not be enjoined at all, and in order that these acts may be clearly exhibited to the students of this debate they are succinctly stated as follows:

No restraining order or injunction shall prohibit any person or persons from doing any of the following acts, to wit:

1. Terminating any relation of employment.
2. Ceasing to perform any work or labor.
3. Recommending, advising, or persuading others by peaceful means so to do.
4. Attending at or near a house or place where any person resides, or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information.
5. Peacefully persuading any person to work or to abstain from working.
6. Ceasing to patronize or to employ any party to such dispute.
7. Recommending, advising, or persuading others by peaceful means so to do.
8. Paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value.
9. Peacefully assembling at any place in a lawful manner and for lawful purposes.
10. Doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto.

The last of the 10 classes of acts above enumerated really embraces all the others, and the entire series only particularize the somewhat more general provisions of the English amendment of 1906, and which itself only particularizes the provisions of the original English trades-unions law.

Speaking of the foregoing provision the Republican members of the Judiciary Committee, on page 7 of their report, say:

The paragraph contains to our mind the *most vicious* proposal of the whole bill.

"CLASS" LEGISLATION.

The pending bill is characterized in the minority report as—

impracticable, invalid, in the interests of a class rather than of the community, and proposes standards of legality without parallel or precedent in our legislation.

I have already alluded to the eulogies which these same gentlemen, who denounce the pending bill as "class" legislation, have heaped upon the courts. Singularly enough, but consistently enough, their speeches will be found devoid of like effusions upon the "class" referred to in the foregoing quotation from their report. I have affirmed, and I want to repeat my own adherence to the law and obedience to the orders of the courts, even when I believe them to be wrong; but I submit, in opposition to the views of gentlemen, that the courts are not the bulwark of our institutions nor the sheet anchor of our liberties, and neither is the Congress nor any other department of this Government; but that the sole hope of the perpetuity and the welfare of this country in the final analysis is the intelligence, the patriotism, and the prosperity of the so-called "class" referred to in the minority report:

Ill fares the land, to hastening ills a prey,
Where wealth accumulates and men decay.
Princes and lords may flourish or may fade—
A breath can make them, as a breath has made;
But a bold peasantry, their country's pride,
When once destroy'd can never be supplied.

The hope of this country and its institutions is the preservation of the conditions which enable men from the ranks to rise to the highest positions in politics, in finance, in industry; the maintenance of a homogeneous democracy that will enable the boy at the plow and at the shovel to become the man upon the bench and in the forum and in all the high places of the country. Given this condition, all other things will be added.

The pending bill is an act—a very small act—looking to the preservation of this condition. Already the abuse of the writ of injunction and the consequent disfavor into which it has fallen has in a measure abated the use of it, and to that extent abated the necessity for this legislation. The workers, through their organizations, have in some measure already achieved an appreciable start toward emancipation from government by injunction, just as they have already established the eight-hour day for vastly greater numbers than have ever received the benefits of that great reform at the hands of Government, and just as, through organized effort, they have achieved many other great reforms and brought about many other safeguards and conditions of labor calculated to uplift and benefit and humanize not only themselves but, because of the vastness of their numbers and their basic position in society, all humanity.

But while it is true that labor through organization has blazed the way for these reforms and in a measure abated the benefit, if not the necessity, of legislative action, it is well that the lawmaking power should safeguard, in the manner proposed in this bill, the rights of the wage earners to organize and, in the furtherance of their efforts to better their condition, to do in a peaceful and orderly manner as members of such organization the things which they might do as individuals. This is all the pending measure seeks to accomplish, and nothing less should be offered or accepted.

ORGANIZED LABOR—ITS BENEFITS.

Nowadays when a man becomes eminent he is honored with a degree in some great institutions of learning. If he becomes preeminent, he is honored with another degree—honorary membership in a labor organization. Having never attained eminence, I have not been honored with the first degree, and, as for the second, I take great pride in the fact that my union card was earned in the ranks of labor. And when I cease to take pride in that fact, and when I cease to feel the deepest and most heartfelt interest in the great cause of humanity which it represents, I shall no longer be worthy of my own respect, to say nothing of the respect of my fellow men.

Organization is not only a benefit, but is the greatest single agency in the uplift of labor. I shall mention only a few of its more important benefits, not as I have learned of them from the lips or pens of others, but as I have learned them in actual experience.

Organized labor is first of all promotive of the brotherhood of man, giving the wage-earner an identity, a sense of unity

with his fellow man; a sense, I may say, of keepership of his brother that would be impossible under a condition where it was every fellow for himself, the devil take the hindmost.

It increases the efficiency and competency of labor. Each trade has its journal of craft instruction. These journals are, in fact, correspondence schools, giving the trades-unionist the theory and technique of his practical work, inculcating pride in his calling and urging him to self-study and improvement.

It makes better men of its membership, appealing to the best that is in them, developing character and raising their mental, moral, and physical standard. It makes for better citizenship, and good citizenship is the best and most enduring asset, the highest product, of any country.

Membership in a labor organization is a certificate of reliability as well as of competency. It is a well-known fact that many employers in the better organized crafts prefer union to nonunion labor. This may not grow out of any great love for organization, but the up-to-date employer knows that the chances are there is something wrong with the man who is not a member, and that somewhere in his make-up or in his record there is a weak spot that will put him beyond the pale of the confidence of the employer as it has put him beyond the pale of affiliation with his fellow workmen.

Nor are the benefits of organization confined to its immediate membership. As the rain falls alike on the just and the unjust so the standard of wages and conditions of labor accruing to organized effort indirectly benefit the unorganized. All values are relative, and it would be manifestly impossible to confine the beneficial results of the better conditions created by organization to its membership, just as impossible as it would be to confer all the benefits of a law of the land upon those who favored its enactment to the exclusion of those who opposed it or took no interest in it.

Nor are the benefits of organization confined to the wage-earners, whether within or without its folds. It is the greatest single factor to-day in giving stability to industrial conditions, thereby promoting peace and prosperity in the commerce and industry of the country. There may be those superficial enough to think that if there were no unions and no union contracts with employers there would be no industrial strife or trouble. Well, maybe there would not. Suppose we call it anarchy, such as was witnessed recently in the unorganized Pittsburgh district of Pennsylvania, and let it go at that.

Nor are the benefits of organization confined to employer and employee. Its beneficial activities reach out beyond these and to-day embrace the entire social and economic life of the people of this country. No civic movement to-day counts itself in battle formation and ready for the charge until the sturdy battalions of labor have fallen into line, and no movement for the betterment of humanity appeals to it in vain. Like all other human institutions, it has made its mistakes and has engaged in foolish crusades, but its mistakes have been of the head and not of the heart and have sprung from an excess of zeal in causes it believed to be right and not with any consciousness of wrong.

But organization is not only a benefit to labor; it is a necessity. Labor owes much to the form of government and political institutions under which we live, and it owes much to the rapid development and exploitation of that vast storehouse of natural wealth embraced within the boundary lines of the United States, but these are blessings and advantages enjoyed by all; and even under these conditions, to be found in no other nation and in no other age, the battle for bread, for a living wage, has become so fierce that the elective franchise and the bounties of nature combined have not sufficed to insure the workman his hire. Under modern industrial conditions, with their great combinations of capital, organization is the only practical method of dealing with the employer and is the strongest barrier between labor and serfdom; and that it is a fixed and lawful institution, both beneficial and necessary, is no longer open to question in the minds of reasonable and progressive men.

But with recognition of the right of labor to organize to secure better pay and conditions of life, even by that last source of recognition, the courts, there is still a strong tendency upon the part of the courts, and particularly the Federal courts, to restrict and deny the peaceful and orderly means by which these ends may be attained, and to deny them in ways so vital as to involve a denial of the dearest constitutional rights of American citizenship.

And while this condition is permitted to exist the entire structure of organized labor is in peril. Recently this country was shocked by the sentence of fine and imprisonment imposed upon Samuel Gompers, John Mitchell, and Frank Morrison, the official heads of the American Federation of Labor.

This sentence was imposed upon them for having violated the most arbitrary and outrageous order of court perhaps ever issued in this country; an order so sweeping as to forbid every member of that organization to even mention by word or pen the name of the Buck Stove & Range Co., the president of which, Mr. James Van Cleave, was, at the same time, the president of an organization which had for its primary object the destruction of the American Federation of Labor and, for that matter, all other labor unions. So radical and sweeping was the decision in which sentence was imposed for the alleged violation of this injunction, and so shockingly intemperate and manifestly prejudiced the utterances and manner of the judge, that it was set aside by the Supreme Court of the United States and will probably never be carried into effect.

But after four years of expensive and harrassing prosecution, the case is still hanging fire in the Federal courts of the District of Columbia, and the fate of the defendants, which involves the very life of organized labor in this country is still hanging fire, and the law under which these prosecutions were laid is still upon the statute books, a threat and a menace to the intelligent, patriotic, and law-abiding workingmen of America, and to the most priceless rights of American citizenship, including the rights of free speech, a free press, and trial by jury.

THE SHERMAN ANTITRUST LAW.

The right of the court to issue such an injunction, the right to enjoin the acts complained of, and not the guilt or innocence of the defendants, is the question of paramount importance to the workingmen of America.

The Supreme Court of the United States, in what is known as the Danbury Hatters case, on February 3, 1908, by Mr. Chief Justice Fuller, in an action brought by Loewe & Co., hat manufacturers of Danbury, Conn., under the Sherman antitrust law, claiming *three-fold damages* for injuries growing out of a peaceful labor dispute, declared the labor organization involved, the United Hatters of North America, which was affiliated with the American Federation of Labor—

> A combination in restraint of trade or commerce among the several States, in the sense in which those words are used in the (Sherman) act, and the action can be maintained accordingly.

The Supreme Court further said that its—

> Conclusion rests on many judgments of this court, to the effect that the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States or restricts in that regard the liberty of a trader to engage in business.

Under this decision, if the employees, in furtherance of their cause, advise persons not to purchase the employer's product, a thing they might do with impunity were no strike pending, they will be liable to *treble damages;* and if a court issues an injunction forbidding them to advise persons to purchase the employer's product and they violate this injunction, they are *guilty of a crime* for which, *without trial by jury*, they may be tried by the judge issuing the order and *sent to prison.* And yet some people persist in calling this a free and civilized country.

LABOR PATIENTLY ENDURES JUDICIAL OUTRAGES.

In Colorado a district judge tried in a few hours 15 striking coal miners and sentenced them all to one year's imprisonment for violating a strike injunction. It was shown afterwards that some of these men were innocent beyond question. Had they been charged with the violation of the criminal statutes of the State, they could have demanded and received separate trials, by jury; as they were charged with contempt of court, they were herded before the judge who issued the order, and with hardly a semblance of trial condemned to one year's imprisonment each. The highest testimonial I could pay to the law-abiding and law-loving character of the American workingman would be merely to point to the fact that he suffers such outrageous travesties upon justice to be perpetrated upon him. It is only highly civilized and law-loving men who would patiently endure such damnable outrages and violations of their natural and inherent rights as citizens of a free country.

When employers may send their attorneys into court and get weak and venal judges to serve their purposes in this manner, what inducement, or what necessity, is there for employers to treat with their employees? The fact is, the too ready issuance of injunctions in labor disputes puts a premium upon the creation of such disputes.

In the partial remedying of this unjust condition we are, as I have already stated, blazing no new trail in the world of industry, but only following haltingly in the footsteps of England, as we have done in the case of our employers' liability laws, and full justice will not be done until labor organizations are completely exempted in this country, as they are in England, from the operation of the monopoly and conspiracy laws.

MISSION OF ORGANIZED LABOR.

It is the mission of organized labor to be the principal factor in bringing about the full and complete emancipation of labor

from the antiquated laws which originated in a primitive condition of society when the wage-earner partook more of the status of a serf than of a freeman. There are those who take the pessimistic view that organized labor has passed the zenith of its usefulness, that it is incapable of playing a further great and useful part in working out the destiny of the people, and that it should now be discarded for some much more radical and political movement. I want to dissent from that view and to affirm the proposition that with the teeming issues of a practical character which are pressing for solution, the pending injunction bill, the contempt bill, the eight-hour law, workmen's compensation, mediation, conciliation, and arbitration of labor disputes, and many other beneficial and humane reforms—I want, I say, with all these issues pressing, to affirm the proposition that instead of having passed or even reached the zenith of its usefulness, this great power for good is only in its infancy. Its fate is in its own hands. May it continue worthy to play a great and good part in making this a better and a kindlier world in which to live.

ENGLISH TRADE-UNION ACT, 1871.

CHAP. 31. An act to amend the law relating to trades-unions. (29th June, 1871.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PRELIMINARY.

1. This act may be cited as "the trade-union act, 1871."

CRIMINAL PROVISIONS.

2. The purposes of any trade-union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade-union liable to criminal prosecution for conspiracy or otherwise.

3. The purposes of any trade-union shall not, by reason merely that they are in restraint of trade, be unlawful, so as to render void or voidable any agreement or trust.

4. Nothing in this act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely:

1. Any agreement between members of a trade-union as such, concerning the conditions on which any members for the time being of such trade-union shall or shall not sell their goods, transact business, employ, or be employed.

2. Any agreement for the payment by any person of any subscription or penalty to a trade-union.

3. Any agreement for the application of the funds of a trade-union—

(a) To provide benefits to members; or

(b) To furnish contributions to any employer or workman not a member of such trade-union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade-union; or

(c) To discharge any fine imposed upon any person by sentence of a court of justice; or

4. Any agreement made between one trade-union and another; or

5. Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

5. The following acts; that is to say:

(1) The friendly societies acts, 1855 and 1858, and the acts amending the same;

(2) The industrial and provident societies act, 1867, and any act amending the same; and

(3) The companies acts, 1862 and 1867—

shall not apply to any trade-union, and the registration of any trade-union under any of the said acts shall be void, and the deposit of the rules of any trade-union made under the friendly societies acts, 1855 and 1858, and the acts amending the same, before the passing of this act, shall cease to be of any effect.

REGISTERED TRADE-UNIONS.

6. Any seven or more members of a trade-union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this act with respect to registry, register such trade-union under this act, provided that if any one of the purposes of such trade-union be unlawful such registration shall be void.

7. It shall be lawful for any trade-union registered under this act to purchase or take upon lease in the names of the trustees for the time being of such union any land not exceeding 1 acre, and to sell, exchange, mortgage, or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade-union shall be considered a distinct union.

8. All real and personal estate whatsoever belonging to any trade-union registered under this act shall be vested in the trustees for the time being of a trade-union appointed as provided by this act for the use and benefit of such trade-union and the members thereof, and the real or personal estate of any branch of a trade-union shall be vested in the trustees of such branch, and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees; and in all actions, or suits, or indictments, or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade-union, without any further description.

9. The trustees of any trade-union registered under this act, or any other officer of said trade-union who may be authorized so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any court of law or equity touching or concerning the property, right, or claim to property of the trade-union; and shall and may, in all cases concerning the real or personal property of such trade-union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade-union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade-union.

10. A trustee of any trade-union registered under this act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade-union, but shall be liable only for the moneys which shall be actually received by him on account of such trade-union.

11. Every treasurer or other officer of a trade-union registered under this act, at such times as by the rules of such trade-union he should render such account as hereinafter mentioned, or upon being required so to do, shall render to the trustees of the trade-union, or to the members of such trade-union, at a meeting of the trade-union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade-union in his hands or custody; and if he fail to do so the trustees of the said trade-union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade-union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade-union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

12. If any officer, member, or other person being or representing himself to be a member of a trade-union registered under this act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade-union, or, having the same in his possession, willfully withhold or fraudulently misapply the same, or willfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade-union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade-union is situate, upon a complaint made by any person on behalf of such trade-union, or by the registrar, or in Scotland at the instance of the procurator fiscal of the court, to which such complaint is competently made, or of the trade-union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade-union, or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not exceeding £20, together with costs not exceeding 20 shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labor, for any time not exceeding three months: *Provided*, That nothing herein contained shall prevent the said trade-union, or in Scotland Her Majesty's advocate, from proceeding by indictment against the said party: *Provided also*, That no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offense under the provisions of this act.

REGISTRY OF TRADE-UNION.

13. With respect to the registry, under this act, of a trade-union, and of the rules thereof, the following provisions shall have effect:

(1) An application to register the trade-union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this act.

(2) The registrar, upon being satisfied that the trade-union has complied with the regulations respecting registry in force under this act, shall register such trade-union and such rules.

(3 No trade-union shall be registered under a name identical with that by which any other existing trade-union has been registered or so nearly resembling such name as to be likely to deceive the members or the public.

(4) Where a trade-union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade-union in the same form, and showing the same particulars, as if it were the annual general statement required as hereinafter mentioned to be transmitted annually to the registrar.

(5) The registrar upon registering such trade-union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or canceled, shall be conclusive evidence that the regulations of this act with respect to registry have been complied with.

(6) One of Her Majesty's principal secretaries of state may from time to time make regulations respecting registry under this act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the registrar under this act, and respecting the fees (if any) to be paid on registry, not exceeding the fees specified in the second schedule to this act, and generally for carrying this act into effect.

14. With respect to the rules of a trade-union registered under this act, the following provisions shall have effect:

(1) The rules of every such trade-union shall contain provisions in respect of the several matters mentioned in the first schedule to this act.

(2) A copy of the rules shall be delivered by the trade-union to every person on demand on payment of a sum not exceeding 1 shilling.

15. Every trade-union registered under this act shall have a registered office to which all communications and notices may be addressed; if any trade-union under this act is in operation for seven days without having such an office, such trade-union and every officer thereof shall each incur a penalty not exceeding £5 for every day during which it is so in operation.

Notice of the situation of such registered office and of any change therein shall be given to the registrar and recorded by him; until such notice is given the trade-union shall not be deemed to have complied with the provisions of this act.

16. A general statement of the receipts, funds, effects, and expenditure of every trade-union registered under this act shall be transmitted to the registrar before the 1st day of June in every year, and shall show fully the assets and liabilities at the date and the receipts and expenditures during the year preceding the date to which it is made out, of the trade-union; and shall show separately the expenditures in respect of the several objects of the trade-union, and shall be prepared and made out up to such date in such form and shall comprise such particulars as the registrar may from time to time require; and every member of and depositor in any such trade-union shall be entitled to receive, on application to the treasurer or secretary of that trade-union, a copy of such general statement without making any payment for the same.

Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade-union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade-union as they exist at that date.

Every trade-union which fails to comply with or acts in contravention of this section, and also every officer of the trade-union so failing, shall each be liable to a penalty not exceeding £5 for each offense.

Every person who willfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding £50 for each offense.

17. The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this act.

The registrar shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this act.

18. If any person with intent to mislead or defraud gives to any member of a trade-union registered under this act, or to any person intending or applying to become a member of such trade-union, a copy of any rules or of any alterations or amendments of the same other than those, respectively, which exist for the time being on the pretense that the same are the existing rules of such trade-union, or that there are no other rules of such trade-union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretense that such rules are the rules of a trade-union registered under this act which is not so registered, every person so offending shall be deemed guilty of a misdemeanor.

LEGAL PROCEEDINGS.

19. In England and Ireland all offenses and penalties under this act may be prosecuted and recovered in manner directed by the summary jurisdiction acts.

In England and Ireland summary orders under this act may be made and enforced on complaint before a court of summary jurisdiction in manner provided by the summary jurisdiction acts.

Provided as follows:

1. The "court of summary jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners; that is to say,

(A.) In England,

(1) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute.

(2) In the city of London, of the lord mayor, or any alderman of the said city.

(3) In any other place of two or more justices of the peace sitting in petty sessions.

(B.) In Ireland,

(1) In the police district of Dublin metropolis of a divisional justice.

(2) In any other place of a resident magistrate.

In Scotland all offenses and penalties under this act shall be prosecuted and recovered by the procurator fiscal of the county in the sheriff court under the provisions of the summary procedure act, 1864.

In Scotland summary orders under this act may be made and enforced on complaint in the sheriff court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offense under this act in the words of such act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offense in this act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

20. In England or Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than 15 days and not more than 4 months after the decision of the court from which the appeal is made.

(2) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal and of the ground thereof.

(3) The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace in the sum of £10, with two sufficient sureties in the sum of £10, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court.

(4) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody.

(5) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just; and if the matter be remitted to the court of summary jurisdiction, the said last-mentioned court shall thereupon rehear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

21. In Scotland it shall be competent to any person to appeal against any order or conviction under this act to the next circuit court of justiciary, or, where there are no circuit courts, to the high court of justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the act passed in the twentieth year of the reign of His Majesty King George II, chapter 43, in regard to appeals to circuit courts in matters criminal, as the same may be altered or amended by any acts of Parliament for the time being in force.

All penalties imposed under the provisions of this act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and lord treasurer's remembrancer on behalf of the Crown.

22. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connection with which any offense under this act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this act.

DEFINITIONS.

23. In this act the term "summary jurisdiction acts" means as follows:

As to England, the act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter 43, intituled "An act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any acts amending the same.

As to Ireland, within the police district of Dublin metropolis, the acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland, "The petty sessions (Ireland) act, 1851," and any act amending the same.

In Scotland the term "misdemeanor" means a crime and offense.

The term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business as would, if this act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade: *Provided*, That this act shall not affect—

1. Any agreement between partners as to their own business.

2. Any agreement between an employer and those employed by him as to such employment.

3. Any agreement in consideration of the sale of the good will of a business or of instruction in any profession, trade, or handicraft.

REPEAL.

24. The trades-unions funds protection act, 1869, is hereby repealed: *Provided*, That this repeal shall not affect—

(1) Anything duly done or suffered under the said act.

(2) Any right or privilege acquired or any liability incurred under the said act.

(3) Any penalty, forfeiture, or other punishment incurred in respect to any offense against the said act.

(4) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering, or imposing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULES.

FIRST SCHEDULE.

Of matters to be provided for by the rules of trade-unions registered under this act.

1. The name of the trade-union and place of meeting for the business of the trade-union.

2. The whole of the objects for which the trade-union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade-union.

3. The manner of making, altering, amending, and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

5. A provision for the investment of the funds and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the trade-union by every person having an interest in the funds of the trade-union.

SECOND SCHEDULE.

Maximum fees:	£	s.	d.
For registering trade-union	1	0	0
For registering alterations in rules	0	10	0
For inspection of documents	0	2	6

ENGLISH TRADE-UNION ACT AMENDMENT, 1876.

CHAP. 22. An act to amend the trade-union act, 1871. (30th June, 1876.)

Whereas it is expedient to amend the trade-union act, 1871: Be it therefore

Enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act and the trade-union act, 1871, hereinafter termed the principal act, shall be construed as one act, and may be cited together as the "trade-union acts, 1871 and 1876," and this act may be cited separately as the "trade-union act amendment act, 1876."

2. Notwithstanding anything in section 5 of the principal act contained, a trade-union, whether registered or unregistered, which insures or pays money on the death of a child under 10 years of age, shall be deemed to be within the provisions of section 28 of the friendly societies act, 1875.

3. Whereas by section 8 of the principal act it is enacted that "the real or personal estate of any branch of a trade-union shall be vested in the trustees of such branch," the said section shall be read and construed as if immediately after the hereinbefore-recited words there were inserted the words "or of the trustees of the trade-union, if the rules of the trade-union so provide."

4. When any person, being or having been a trustee of a trade-union or of any branch of a trade-union, and whether appointed before or after the legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others or solely, is absent from Great Britain or Ireland, respectively, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the registrar so direct, then by the accountant general or deputy or assistant accountant general of the Bank of England or Bank of Ireland, as the case may be; and the governors and companies of the Bank of England and Bank of Ireland, respectively, are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

5. The jurisdiction conferred in the case of certain offenses by section 12 of the principal act upon the court of summary jurisdiction for the place in which the registered office of a trade-union is situate may be exercised either by that court or by the court of summary jurisdiction for the place where the offense has been committed.

6. Trade-unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the privileges of this act or the principal act in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

In this section "country" means England, Scotland, or Ireland.

7. Whereas by the "life assurance companies act, 1870," it is provided that the said act shall not apply to societies registered under the acts relating to friendly societies: The said act (or the amending acts) shall not apply nor be deemed to have applied to trade-unions registered or to be registered under the principal act.

8. No certificate of registration of a trade-union shall be withdrawn or canceled otherwise than by the chief registrar of friendly societies, or in the case of trade-unions registered and doing business exclusively in Scotland or Ireland, by the assistant registrar for Scotland or Ireland, and in the following cases:

(1) At the request of the trade-union to be evidenced in such manner as such chief or assistant registrar shall from time to time direct.

(2) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade-union has become void under section 6 of the trade-union act, 1871, or that such trade-union has willfully and after notice from a registrar, whom it may concern, violated any of the provisions of the trade-union acts, or has ceased to exist.

Not less than two months' previous notice in writing, specifying briefly the ground of any proposal, withdrawal, or canceling of certificate—unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the chief or assistant registrar to cancel the same forthwith—shall be given by the chief or assistant registrar to a trade-union before the certificate of registration of the same can be withdrawn or canceled, except at its request.

A trade-union whose certificate of registration has been withdrawn or canceled shall, from the time of such withdrawal or canceling, absolutely cease to enjoy as such the privileges of a registered trade-union, but without prejudice to any liability actually incurred by such trade-union, which may be enforced against the same as if such withdrawal or canceling had not taken place.

9. A person under the age of 21, but above the age of 16, may be a member of a trade-union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade-union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade-union.

10. A member of a trade-union not being under the age of 16 years may, by writing under his hand, delivered at, or sent to, the registered office of the trade-union, nominate any person not being an officer or servant of the trade-union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator), to whom any moneys payable on the death of such member not exceeding £50 shall be paid at his decease, and may from time to time revoke or vary such nomination by writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator the trade-union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

11. A trade-union may, with the approval in writing of the chief registrar of friendly societies, or in the case of trade-unions registered and doing business exclusively in Scotland or Ireland, of the assistant registrar for Scotland or Ireland, respectively, change its name by the consent of not less than two-thirds of the total number of members.

No change of name shall affect any right or obligation of the trade-union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade-union or any other officer who may sue or be sued on behalf of such trade-union, notwithstanding its new name.

12. Any two or more trade-unions may, by the consent of not less than two-thirds of the members of each or every such trade-union, become amalgamated together as one trade-union, with or without any dissolution or division of the funds of such trade-unions, or either or any of them; but no amalgamation shall prejudice any right of a creditor of either or any union party thereto.

13. Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade-union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this act in respect of changes of name have been complied with, and in the case of an amalgamation signed by seven members, and countersigned by the secretary of each or every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this act in respect of amalgamations have been complied with, shall be sent to the central office established by the friendly societies act, 1875, and registered there, and until such change of name or amalgamation is so registered the same shall not take effect.

14. The rules of every trade-union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade-union under the hand of the secretary and seven members of the same, shall be sent within 14 days thereafter to the central office hereinbefore mentioned, or in the case of trade-unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland, respectively, and shall be registered by them: *Provided*, That the rules of any trade-union registered before the passing of this act shall not be invalidated by the absence of a provision for dissolution.

15. A trade-union which fails to give any notice or send any document which it is required by this act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than £1 and not more than £5, recoverable at the suit of the chief or any assistant registrar of friendly societies, or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues.

16. So much of section 23 of the principal act as defines the term "trade-union," except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows:

The term "trade-union" means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

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ENGLISH TRADE-UNION ACT AMENDMENT, 1906.

Chap. 47. An act to provide for the regulation of trades-union and trade disputes. (Dec. 21, 1906.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The following paragraph shall be added as a new paragraph after the first paragraph of section 3 of the conspiracy and protection of property act, 1875:

"An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable."

2. (1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade-union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

(2) Section 7 of the conspiracy and protection of property act, 1875, is hereby repealed from "attending at or near" to the end of the section.

3. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills.

4. (1) An action against a trade-union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade-union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of the trustees of a trade-union to be sued in the events provided for by the trades-union act, 1871, section 9, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

5. (1) This act may be cited as the trade-disputes act, 1906, and the trade-union acts, 1871 and 1876, and this act may be cited together as the trade-union acts, 1871 to 1906.

(2) In this act the expression "trade-union" has the same meaning as in the trade-union acts, 1871 and 1876, and shall include any combination as therein defined, notwithstanding that such combination may be the branch of a trade-union.

(3) In this act and in the conspiracy and protection of property act, 1875, the expression "trade dispute" means any dispute between employers and workmen or between workmen and workmen which is connected with the employment or nonemployment or the terms of the employment or with the conditions of labor of any person, and the expression "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises; and, in section 3 of the last-mentioned act, the words "between employers and workmen" shall be repealed.

Mr. CLAYTON. Mr. Speaker, I now yield to the gentleman from Illinois [Mr. GRAHAM] eight minutes. I have eight minutes remaining, and I yield eight minutes to the gentleman.

Mr. GRAHAM. Mr. Speaker, this question has been so thoroughly discussed from the legal viewpoint that I feel justified in looking at it for a few moments from a different angle. I believe that there is real need for this proposed legislation and that the need for it is largely the result of the changed conditions which have come during the past 50 or 60 years, largely as a result of the invention and perfection of labor-saving machinery.

In natural opportunities this country stands without a parallel, so far as I know. Its immense area of rich agricultural land, its vast bodies of fine forest, its great measures of coal and oil and gas, its immense quantity of iron and copper and gold and silver, all waiting for the developing touch of labor, put our country in a class all its own.

Add to these natural opportunities the remarkable inventive genius of the American people, and the remarkable perfection of the machines they have invented for converting these natural opportunities into the form of concrete wealth, and then add to all that the productive power of the millions upon millions of laborers who came to our shores ready for work and willing to work, and you have a combination for producing wealth almost beyond the power of the imagination to conceive.

The result has been that our natural wealth has increased by leaps and bounds.

The census of 1900 estimated the natural wealth at about $110,000,000,000.

But how was that wealth distributed among the people?

That census gave us 12,500,000 families in the United States.

The unchallenged fact is that in the distribution of the national wealth more than half of it was owned by 125,000 families. In other words, 125,000 of these families owned more of the Nation's wealth than the other 12,375,000 families, or, in yet other words, 1 per cent of the families of the country owned more property than the other 99 per cent.

And owning so much of the country's wealth also includes owning largely the means of producing more wealth.

And during the past decade these conditions have doubtless become greatly intensified.

The consolidation of banking institutions and of life insurance companies and of trusts of one kind and another during the past 10 years has no doubt concentrated the wealth of the country in the hands of even fewer people who control not alone their own funds, but also vast amounts of trust funds placed in their hands and quite as serviceable to them as if their own.

This is not a mere theory, it is an actual condition, and must be reckoned with. As I said before, it results largely from the invention of labor-saving and wealth-producing machinery, and from the further fact that the laws were made in the interest of a favored few, who also managed to get most of the benefits accruing from these inventions.

While these machines and these millions of workers were creating wealth so rapidly, wisdom would have suggested legislative action to prevent the creation of an aristocracy of wealth, and, for the greater safety of republican government, secure a more general distribution of it, but instead of doing so, we legislated through protective tariff laws and patent laws, for the very purpose of gathering it into the coffers of a few only of our people. A result is, as I have stated, that to-day the great bulk of the wealth of the country is concentrated in the hands of a comparatively few of our people, and those few insist on running not only the business of the country but its politics also.

It is axiomatic that wealth is power, and hence that those who control the wealth of a country will to a corresponding extent exercise the power in that country.

Under our system of government the courts are to society almost what the rudder is to the ship. They have the last word as to the meaning of the laws enacted.

Then, too, in many ways judicial decisions give trend and direction to new conditions concerning which rights have to be determined before legislative action is had.

Hence if the great special interests could nominate the men who are to pass upon the laws and declare their meaning, it would not make very much difference who made the laws.

Fletcher, of Saltoun, said, "Give me the making of the people's ballads, and I care not who makes their laws."

He would have been more accurate had he said, "Give me power to name the men who construe the laws, and I care not who makes them."

If I am not mistaken there is a feeling pretty general among the people, and growing quite too rapidly, that the "big interests" wield altogether too great an influence in the selection of the men who occupy places on the Federal bench. In my opinion a great many, even of conservative people, think the Federal judiciary is recruited too largely from the ranks of those lawyers who have been the professional representatives of great interests, and that they have in some instances been so far affected by their professional environment as to forget the due and proper relations between the rights of persons and the rights of property. This result might naturally be expected. The training of years can not be put aside quickly. Their lives were spent fighting for the rights of property, and that point of view is apt to remain, for they continue human after their elevation to the bench.

This thought gives much sanction to the position urged by Mr. Bryan, that the indorsements of successful applicants for places on the Federal bench should be made public. As a result of this attempted deification of property and property rights there is to-day a very sharp conflict waging, and this bill is one of the results of that conflict.

A great man from my State, one of the greatest of Americans; nay, one of the greatest of men, said that on a question between the man and the dollar he stood for the rights of the man as against the rights of the dollar [applause]; and on that proposition I stand with him. Property rights are getting too much recognition at the expense of human rights, and this bill is simply an attempt to get back to where Abraham Lincoln would have us; it is simply an assertion of the rights of men as against the rights of property. [Applause.]

I am willing to acknowledge the great value of precedents in the administration of justice, especially wise and sound precedents, but I sometimes think we lawyers are too much wedded to and guided by precedents, especially when we are dealing with conditions essentially different from those under which the precedents were made. The eminent gentleman from Pennsylvania [Mr. MOON] tells us what courts and judges have said in the past, and argues as if he thought when a court has said something it should be as a law of the Medes and Persians. Without admitting the accuracy of his views as to what the courts have said, I maintain that under the conditions which confront us we have a right to take new ground and to meet new conditions by new remedial measures.

This bill is based on the theory that under the guise of restraining orders and injunctions the equity powers of the courts have been misused, if not abused, by Federal judges in the interest of property rights, and, as I have said, their former professional connection too often gives color to the charge and often inclines the public to believe it may be so. The belief is quite general, and some of the cases give it foundation, that Federal judges have stretched the equity powers of the court till they extend into the field of the common law, and even to that of the criminal law. This constitutes a serious invasion of the constitutional rights of the citizen, as it deprives him of the right of trial by jury in cases where he is entitled to it by the fundamental law.

In this struggle for human rights as against the rights of property those who are ranged on the side of the man against the dollar are not asking for anything they are not entitled to. They contend that they are not the aggressors. They are only defending rights they already had and which, through the aggression of their opponents, they are in danger of losing. They are not asking for special legislation; they only ask that they be not made the victims of special laws made by the courts through the unjust, unlawful, and unwise extension of its equity powers.

It is to prevent this unhappy result that this bill is offered, and it is wisely and conservatively intended to reach that situation, and is, in my judgment, a happy solution of the difficulty, giving to the man and the dollar the rights which each is entitled to.

I will not attempt a complete analysis of the bill, but I do desire to call attention to a few of the changes it makes.

In any system for the administration of justice there is no fact more important or fundamental than notice to the party to be affected. It is axiomatic that every man is entitled to his day in court. To deprive a man of his rights without notice and a chance to be heard is the grossest tyranny, unless giving such notice would work a greater injury to some one else.

Perhaps there is no severer indictment of the tyrant Nero than that he caused his imperial rescripts to be posted so high upon the walls of Rome that the citizens could not read them and then punished them for the violation of laws of which they had no proper notice.

The practice of issuing temporary injunctions without notice has grown to be too common. Often a temporary restraining order so issued was allowed to stand indefinitely, although supported by no evidence beyond a sworn statement that if it did not issue without notice irreparable injury would result. Under the provisions of this bill it will be necessary to state the facts showing how irreparable injury would follow if the order is not issued, and when issued the temporary order must at once be entered on the court record and remains valid for only seven days after entry. Under certain conditions it may be extended seven more days only without notice to the party affected.

Another cause for complaint has been that the injunction order often referred those affected by it to the bill of complaint for details as to what the court commanded them to do or not to do. As the court and court files were often far

removed from the place where the order was to be in effect, it was difficult for those concerned to know just what was prohibited. This bill cures that by providing that the order itself shall give the necessary information.

Under the present arrangement it is in the discretion of the judge whether he shall require the complainant to give bond. This bill prohibits the issuing of any injunction or restraining order until a good and sufficient bond is first filed.

Many restraining orders heretofore issued in labor disputes were so worded as to include everybody in the world. This bill limits the restraining order to the parties defendant and those acting in concert with them, and is binding only on those who in some way have actual notice of it.

It also contains a provision against compulsory personal service, vindicates the right of freedom of speech and of peaceably assembling in a lawful manner, and of doing anything which might lawfully be done if there were no labor dispute pending. The bill is, in my judgment, both wise and necessary. For years there has been a demand for it; Presidents have recommended it; measure after measure has been introduced and considered; but, until a Democratic House took it up, it continued to slumber peacefully in the appropriate pigeonhole.

To-day the Democratic House will breathe the breath of life into it and start it on its way. I hope it will soon find a place in the statute book, and that it will prove a buttress, a bulwark to protect human rights against the unjust encroachments of mere property rights. [Applause.]

Mr. McCOY. Mr. Speaker, it is not my purpose to speak of this bill as a lawyer or to discuss the legal aspects of it. The report of the majority of the Committee on the Judiciary and the very able arguments of the gentleman from West Virginia [Mr. DAVIS] leave nothing to be said in regard to the legal aspects of the measure.

What I should like to do is to call attention to and emphasize an unfortunate and, as it seems to me, a certain dangerous attitude which has been assumed and, I presume, is still held toward remedial legislation of this kind. In the report of the hearings on the matter of injunctions before the Committee on the Judiciary an attorney representing an association opposing the enactment into law of any of the propositions being considered by the committee disclosed the attitude that I have indicated. One of the members of the committee said to him:

I should like to ask you this question: In the course of an experience which has been more extensive than that of any other man I know, has it come to your observation that the writ of injunction in its issuance is abused in any way at all?

The reply was:

Never. They are really very hard to get.

He was asked further:

Is there any suggestion that it occurs to you to make for a change in the administration of the law?

And he replied:

No; not even the one contained in the proposition of Mr. MOON in the last Congress * * *.

The proposition of Mr. MOON is, I believe, what is now being offered as a substitute for the bill under consideration.

It is conclusively shown by what has been stated this afternoon by the gentleman from West Virginia [Mr. DAVIS] that abuses do exist, so serious that they have called forth messages from at least two Presidents of the United States, one of whom was formerly a Federal judge. It is a matter of common knowledge that many other judges declare that such abuses do exist, and any lawyer who has had occasion to keep posted as to the law of injunctions knows it, and, if he is frank, will so admit. Therefore the gentleman to whom I refer differs with the entire Judiciary Committee and with these judges and lawyers.

Employers of labor have a right to expect and demand that those attorneys whom they employ to guard what they believe to be their rights in matters of this kind shall advise them not only what the law is, but also when abuses have arisen what the law ought to be, and I repeat that it is most unfortunate that those who are learned in the law should not deem that they have a higher duty to perform than merely giving such advice as may, from a purely selfish point of view, seem to be in the interest of those by whom they are retained, namely, to endeavor to be real counselors on one of the gravest problems of the day.

Mr. CLAYTON. Mr. Speaker, I ask unanimous consent to print in the RECORD the report of the committee on this bill, the acts of Congress relating to injunctions, and also the views of the minority on the same bill.

The SPEAKER pro tempore. The gentleman from Alabama asks unanimous consent to insert in the RECORD the matter indicated. Is there objection? [After a pause.] The Chair hears none.

The reports referred to are as follows:

[House Report No. 612, Sixty-second Congress, second session.]

REGULATION OF INJUNCTIONS.

Mr. CLAYTON, from the Committee on the Judiciary, submitted the following report, to accompany H. R. 23635:

The Committee on the Judiciary, having had under consideration H. R. 23635, to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, report the same back with the recommendation that the bill do pass.

The too ready issuance of injunctions or the issuance without proper precautions or safeguards has been called to the attention of the Congress session after session for many years. The bill now reported seeks to remedy the evils complained of by legislation directed to those specific matters which have given rise to most criticism. These matters are so segregated in various sections of the bill that they may be separately discussed.

I.

The first section of the bill amends section 263 of the judicial code, which relates to two distinct steps in the procedure, namely, notice and security. But the amended section relates only to the notice, leaving the matter of security to be dealt with by a new section, 266a.

FORMER STATUTES.

In order to fully understand the subject of notice in injunction cases it is necessary to give an historical résumé of the subject. In the judiciary act of 1789, which was passed during the first session of that year, Congress having created the different courts according to the scheme outlined by Chief Justice Ellsworth, conferred upon the courts power to issue all writs, including writs of ne exeat (a form of injunction), according to legal usages and practice. In 1793, however, there was a revision of that statute, and among other things the same powers, substantially, were conferred upon the judges as before; but at the end of the section authorizing the issuance of injunctions was this language: "No injunction shall be issued in any case without reasonable previous notice to the adverse party or his attorney."

The law stood thus until the general revision of 1873, during which period the law expressly required reasonable notice to be given in all cases. But the will of Congress as thus expressed was completely thwarted and the statute nullified by the peculiar construction placed upon it by the courts. The question frequently arose. The courts got around it in various ways, but usually by holding that it did not apply to a case of threatened irreparable injury, notwithstanding that its language was broad and sweeping, plainly covering all cases. Another form of expression often used is found in Ex parte Poultney (4 Peters C. C. C., 472):

"Every court of equity possesses the power to mold its rules in relation to the time of appearing and answering so as to prevent the rule from working injustice, and it is not only in the power of the court, but it is its duty to exercise a sound discretion upon this subject."

The court found a similar method of evading the sweeping prohibition of the revision of 1793, with respect to notice in Lawrence *v.* Bowman. (1 U. S. C., Alester, 230.)

But the earliest provision requiring notice came before the Supreme Court in 1799, in New York *v.* Connecticut (4 Dall., 1). Its constitutionality was not qustioned. The only issue was as to the sufficiency of the notice, Chief Justice Ellsworth, for the court, saying: "The prohibition contained in the statute that writs of injunction shall not be granted without reasonable notice to the adverse party or his attorney extends to injunctions granted by the Supreme Court or the circuit court as well as to those that may be granted by a single judge. The design and effect, however, of injunctions must render a shorter notice, reasonable notice, in the case of an application to a court than would be so construed in most cases of an application to a single judge, and until a general rule shall be settled the particular circumstances of each case must also be regarded."

Here was a case in which, although no point was made by counsel on any question of constitutionality, the Supreme Court accepted the comprehensive requirement of the act of 1793 as binding on all the Federal courts.

Now we come to the present law, found in section 263 of the Judicial Code, and reading thus:

"Whenever notice is given of a motion for an injunction out of a district court the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion; and such order may be granted with or without security, in the discretion of the court or judge."

This was the law as contained in section 718 of the Revised Statutes, said section having been enacted in 1872. It simply embodies the practice of the courts with respect to notice, a practice established notwithstanding the nonconformity of the practice to the positive requirement of the act of 1793.

PROPOSED CHANGES.

But it will be seen that the giving of notice and requiring security, left by the present law to the discretion of the court, is by this bill a positive duty, except where irreparable and immediate injury might result from the giving of a notice or the delay incident thereto, in which case the court or judge may issue a temporary restraining order pending the giving of the notice. The concluding part of the amended section has an effect to safeguard parties from the reckless and inconsiderate issuance of restraining orders. Injuries compensable in damages recoverable in an action at law are not treated or considered by the courts as irreparable in any proper legal sense, and parties attempting to show why the injury sought to be restrained is irreparable would often disclose an adequate legal remedy. This provision requires the reason to appear in the order, but it should be read in connection with the new section 266b, requiring the order to be made by the court or judge to be likewise specific in other essentials, and section 266c, requiring that every complaint filed for the purpose of obtaining the order, in the cases there specified, shall contain a particular description of the property or property right for which the prohibitive power of the court is sought, and that such complaint shall be verified.

A valuable provision of the amendment is one that a restraining order issued without notice "*shall* by its terms expire within such time after entry, not to exceed seven days, as the court or judge may fix, unless within the time so fixed the order is extended or renewed for a like period, after notice to those previously served, if any, and for good cause shown, and the reasons for such extension shall be entered of record."

A legislative precedent for such legislation is found in the act of 1807, wherein it was provided that injunctions granted by the district courts "shall not, unless so ordered by the circuit court, continue longer than to the circuit court next ensuing, nor shall an injunction

be issued by a district judge in any case where a party has had a reasonable time to apply to the circuit court for the writ." (U. S. Stat. L., vol. 2, p. 418.)

If the views of President Taft on this subject have not changed, he will welcome an opportunity to approve a bill containing such provisions as those in the amendment governing notice, because in his message of December 7, 1909, to the regular session of the Sixty-first Congress, after a quotation from the Republican platform of 1908, he said:

"I recommend that in compliance with the promise thus made appropriate legislation be adopted. The ends of justice will best be met and the chief cause of complaint against ill-considered injunctions without notice will be removed by the enactment of a statute forbidding hereafter the issuing of any injunction or restraining order, whether temporary or permanent, by any Federal court without previous notice and a reasonable opportunity to be heard on behalf of the parties to be enjoined, unless it shall appear to the satisfaction of the court that the delay necessary to give such notice and hearing would result in irreparable injury to the complainant, and unless, also, the court shall from the evidence make a written finding, which shall be spread upon the court minutes, that immediate and irreparable injury is likely to ensue to the complainant, and shall define the injury, state why it is irreparable, and shall also indorse on the order issued the date and the hour of the issuance of the order. Moreover, every such injunction or restraining order issued without previous notice and opportunity by the defendant to be heard should by force of the statute expire and be of no effect after seven days from the issuance thereof or within any time less than that period which the court may fix, unless within such seven days or such less period the injunction or order is extended or renewed after previous notice and opportunity to be heard.

"My judgment is that the passage of such an act, which really embodies the best practice in equity and is very likely the rule now in force in some courts, will prevent the issuing of ill-advised orders of injunction without notice and will render such orders, when issued, much less objectionable by the short time in which they may remain effective."

II.

Section 266a simply requires security for costs and damages in all cases, leaving it no longer within the discretion of the courts whether any such security or none shall be given.

Prior to the said act of 1872 (contained in the revision of 1873) there appears to have been no legislation on the matter of security in injunction cases; but that security was usually required is a fact well known to the legal profession. It seems clearly just and salutary that the extraordinary writ of injunction should not issue in any case until the party seeking it and for whose benefit it issues has provided the other party with all the protection which security for damages affords.

It appears by the authorities, both English and American, to have been always within the range of judicial discretion, in the absence of a statute, to waive security, though better practice has been to require security as a condition to issuing restraining orders and injunctions.

The new section, 266a, takes the matter of requiring security out of the category of discretionary matters, where it was found by the committee on revision and permitted to remain.

For a discussion of the existing law on the question of security, we refer to Russell *v.* Farley. (105 U. S., 433.)

III.

Section 266b is of general application. Defendants should never be left to guess at what they are forbidden to do, but the order "shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained." It also contains a safeguard against what have been heretofore known as dragnet or blanket injunctions, by which large numbers may be accused, and eventually punished, for violating injunctions in cases in which they were not made parties in the legal sense and of which they had only constructive notice, equivalent in most cases to none at all. Moreover, no person shall be bound by any such order without actual personal notice.

EXISTING LAW AND PRACTICE.

There was heretofore no Federal statute to govern either the matter of making or form and contents of orders for injunctions. Of course, where a restraining order is granted that performs the functions of order, process, and notice. But the writ of injunction, where temporary, is preceded by the entry of an order, and where permanent by the entry of a decree.

The whole matter appears to have been left, both by the States and the Federal Government, to the courts, which have mostly conformed to established principles.

The most important of these was that the order should be sufficiently clear and certain in its terms that the defendants could by an inspection of it readily know what they were forbidden to do.

See Arthur *v.* Oakes, 63 Fed. Rep., 310, 25 L. R. An., 414; St. Louis Min., etc., Co. *v.* Co. c. Montana Min. Co., 58 Fed. Rep., 129; Sweet *v.* Mangham, 4 Jur., 479; 9 L. J. Ch., 323, 34 Eng. Ch., 51; Cother *v.* Midland R. Co., 22 Eng. Ch., 469.

It should also be in accordance with the terms of the prayer of the bill. (State *v.* Rush County, 35 Kans., 150; McEldowney *v.* Lowther, 49 W. Va., 348.) It should not impose a greater restraint than is asked or is necessary (Shubert *v.* Angeles, 80 N. Y. App. Div., 625; New York Fire Dept. *v.* Baudet, 4 N. Y. Supp., 206), and should be specific and certain. (Orris *v.* National Commercial Bank, 81 N. Y. App. Div., 631; St. Rege's Paper Co. *v.* Santa Clara Lumber Co., 55 N. Y. App. Div., 225; Norris *v.* Cable, 8 Rich (S. C.), 58; Parker *v.* First Ave. Hotel Co., 24 Ch. Div., 282; Hackett *v.* Baiss. L. R., 20 Eq., 494; Dover Harbour *v.* London, etc., R. Co., 3 De G. F. & J., 559; Low *v.* Innes, 4 De G. J. & S., 286.)

So it appears that section 266b really does not change the best practice with respect to orders, but imposes the duty upon the courts, in mandatory form, to conform to correct rules, as already established by judicial precedent.

That such provision is necessary and timely will appear upon an inspection of some orders which have issued.

For instance, take the case of Kansas & Texas Coal Co. *v.* Denney, decided in the district court for Arkansas in 1899. And here, as in most of such cases, no full official report of the case can be obtained, but a mere memorandum. In this case the defendants (strikers) were ordered to be and were enjoined from "congregating at or near or on the premises of the property of the Kansas & Texas Coal Co. in, about, or near the town of Huntington, Ark., or elsewhere, for the purpose of intimidating its employees or preventing said employees from rendering service to the Kansas & Texas Coal Co. from inducing or coercing by threats, intimidation, force, or violence any of said employees to leave the employment of the said Kansas & Texas Coal Co., or from in any manner interfering with or molesting any person or persons who may be employed or seek employment by and of the Kansas & Texas Coal Co. in the operation of its coal mines at or near said town of Huntington, or elsewhere."

It will be observed that a defendant in that suit would render himself liable to punishment for contempt if he met a man seeking employment by the company in a foreign country and persuaded him not to enter its service.

The bill further provides that it shall be "binding only upon parties to the suit, their agents, servants, employees, and attorneys, or those in active concert with them, and who shall by personal service or otherwise have received actual notice of the same." Unquestionably this is the true rule, but unfortunately the courts have not uniformly observed it. Much of the criticism which arose from the Debs case (64 Fed. Rep., 724) was due to the fact that the court undertook to make the order effective not only upon the parties to the suit and those in concert with them, but upon all other persons whomsoever. In Scott *v.* Donald (165 U. S., 117), the court rebuked a violation by the lower court in the following language:

"The decree is also objectionable because it enjoins persons not parties to the suit. This is not a case where the defendants named represent those not named. Nor is there alleged any conspiracy between the parties defendant and other unknown parties. The acts complained of are tortious and do not grow out of any common action or agreement between constables and sheriffs of the State of South Carolina. We have indeed a right to presume that such officers, though not named in this suit, will, when advised that certain provisions of the act in question have been pronounced unconstitutional by the court to which the Constitution of the United States refers such questions, voluntarily refrain from enforcing such provisions; but we do not think it comports with well-settled principles of equity procedure to include them in an injunction in a suit in which they were not heard or represented or to subject them to penalties for contempt in disregarding such an injunction. (Fellows *v.* Fellows, 4 John. Chan., 25, citing Iveson *v.* Harris, 7 Ves., 257.)

"The decree of the court below should therefore be amended by being restricted to the parties named as plaintiff and defendants in the bill, and this is directed to be done, and it is otherwise."

IV.

Section 266c is concerned with cases between "employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment."

The first clause of the new section 266c relates to the contents and form of the complaint. It must disclose a threatened irreparable injury to property or to a property right of the party making the application for which there is no adequate remedy at law. And the property or property right must be described "with particularity."

These requirements are merely those of good pleading and correct practice in such cases established by a long line of precedents, well understood by the profession and which should be but perhaps have not been uniformly applied. To show this it is only necessary to briefly state the applicable rules, citing some of the numerous authorities.

As the granting of an injunction rests in some degree in the discretion of the chancellor, allegations in the complaint should show candor and frankness. (Moffatt *v.* Calvert County Commissioners, 97 Md., 266; Johnston *v.* Glenn, 40 Md., 200; Edison Storage Battery Co. *v.* Edison Automobile Co., 67 N. J. Eq., 44; Sharp *v.* Ashton, 3 Ves. & B., 144.)

The omission of material facts which, in the nature of the case, must be known to the plaintiff will preclude the granting of the relief. (Sprigg *v.* Western Tel. Co., 46 Md., 67; Walker *v.* Burks, 48 Tex., 206.)

An injunction may be refused if the allegations are argumentative and inferential. (Battle *v.* Stevens, 32 Ga., 25; Warsop *v.* Hastings, 22 Minn., 437.)

The allegations of the complaint must be definite and certain. (St. Louis *v.* Knapp Co., 104 U. S., 658.)

The complaint must set forth the facts with particularity and minuteness (Minor *v.* Terry, Code Rep. N. S. (N. S.), 384), and no material fact should be left to inference. (Warsop *v.* Hastings, 22 Minn., 437; Philphower *v.* Todd, 11 N. J. Eq., 54; Perkins *v.* Collins, 3 N. J. Eq., 482.)

Facts, and not the conclusions or opinions of the pleader, must be stated. (McBride *v.* Ross (D. C.), 13 App. Cas., 576.)

An injunction should not ordinarily be granted when the material allegations are made upon information and belief. (Brooks *v.* O'Hara, 8 Fed. Rep., 529; In re Holmes, 3 Fed. Rep. Cases No. 1, 562.)

The complaint must clearly show the threats or acts of defendant which cause him to apprehend future injury. (Mendelson *v.* McCabe, 144 Cal., 230; Ryan *v.* Fulghurn, 96 Ga., 234.) And it is not sufficient to allege that the defendant claims the right to do an act which plaintiff believes illegal and injurious to him, since the intention to exercise the right must be alleged. (Lutman *v.* Lake Shore, etc., R. Co., 56 Ohio St., 433; Attorney General *v.* Eau Claire, 37 Wis., 400.)

The bill must allege facts which clearly show that the plaintiff will sustain substantial injury because of the acts complained of. (Home Electric Light, etc., Co. *v.* Gobe Tissue Paper Co., 146 Ind., 673; Boston, etc., Ry. Co. *v.* Sullivan, 177 Mass., 230; McGovern *v.* Loder (N. J. Ch., 1890), 20 Atl. Rep., 209; Smith *v.* Lockwood, 13 Barb., 209; Jones *v.* Stewart (Tenn. Ch. App., 1900), 61 Sev., 105; Spokane St. R. Co. *v.* Spokane, 5 Wash., 634; State *v.* Eau Claire, 40 Wis., 533.)

And it is not sufficient to merely allege injury without stating the facts. (Giffing *v.* Gibb, 2 Black, 519; Spooner *v.* McConnell, 22 Fed. Cases, No. 13245; Bowling *v.* Crook, 104 Ala., 130; Grant *v.* Cooke, 7 D. C., 165; Coast Line R. Co. *v.* Caben, 50 Ga., 451; Dinwiddie *v.* Roberts, 1 Greene, 363; Wabaska Electric Co. *v.* Wymore Co., Nebr., 199; Lubrs *v.* Sturtevant, 10 Or., 170; Farland *v.* Wood, 35 W. Va., 458.)

Since the jurisdiction in equity depends on the lack of an adequate remedy at law, a bill for an injunction must state facts from which the court can determine that the remedy at law is inadequate. (Pollock *v.* Farmers' Loan & Tr. Co., 157 U. S., 429; Safe Deposit, etc., Co. *v.* Anniston, 96 Fed. Rep., 661.)

If the inadequacy of the legal remedy depends upon the defendant's insolvency, the fact of insolvency must be positively alleged. (Fullington *v.* Kyle Lumber Co., 139 Ala., 242; Graham *v.* Tankersley, 15 Ala., 634.)

An injunction will not be granted unless the complaint shows that a refusal to grant the writ will work irreparable injury. (California Nav. Co. *v.* Union Transp. Co., 122 Cal., 641; Cook County Brick Co.,

92 Ill. App., 526; Manufacturers' Gas Co. *v.* Indiana Nat. Gas, etc., Co., 156 Ind., 679.) And it is not sufficient simply to allege that the injury will be irreparable, but the facts must be stated so that the court may see that the apprehension of irreparable injury is well founded. (California Nav. Co. *v.* Union Transp. Co., 122 Cal., 641; Empire Transp. Co. *v.* Johnson, 76 Conn., 79; Orange City *v.* Thayer, 45 Fla., 502.)

The plaintiff must allege that he has done or is willing to do everything which is necessary to entitle him to the relief sought. (Stanley *v.* Gadsley, 10 Pet. (U. S.), 521; Elliott *v.* Sibley, 101 Ala., 344; Burham *v.* San Francisco Fuse Mfg. Co., 76 Cal., 26; Sloan *v.* Coolbaugh, 10 Iowa, 31; Lewis *v.* Wilson, 17 N. Y. Supp., 128; Spann *v.* Sterns, 18 Tex., 556.)

The second paragraph of section 266c is concerned with specific acts which the best opinion of the courts holds to be within the right of parties involved upon one side or the other of a trades dispute. The necessity for legislation concerning them arises out of the divergent views which the courts have expressed on the subject and the difference between courts in the application of recognized rules. It may be proper to notice, in passing, that the State courts furnish precedents frequently for action by the Federal courts, and vice versa, so that a pernicious rule or an error in one jurisdiction is quickly adopted by the other. It is not contended that either the Federal or the State courts have stood alone in any of the precedents which are disapproved. The provisions of this section of the bill are self-explanatory, and in justification of the language used we content ourselves with submitting quotations from recognized authorities. We classify these authorities by quoting, first, the clauses of the bill to which they have particular reference.

The first clause:

"And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do."

In Allis Chalmers Co. *v.* Iron Molders' Union (C. C., 150 Fed. R., 155), Judge Sanborn said:

"The conclusion to be drawn from the cases, as applicable to this controversy, is, I think, that the combination of the defendant unions, their members, and the defendant O'Leary, to strike, and to further enforce the strike, and if possible to bring the employers to terms by preventing them from obtaining other workmen to replace the strikers, was not unlawful, because grounded on just cause or excuse, being the economic advancement of the union molders and the competition of labor against capital."

In Arthur *v.* Oakes (63 Fed. R., 310, 317), Justice Harlan, for the court, said:

"If an employee quits without cause, and in violation of an express contract to serve for a stated time, then his quitting would not be of right, and he would be liable for any damages resulting from a breach of his agreement, and perhaps, in some states of case, to criminal prosecution for loss of life or limb by passengers or others, directly resulting from his abandoning his post at a time when care and watchfulness were required upon his part in the discharge of a duty he had undertaken to perform. And it may be assumed for the purposes of this discussion that he would be liable in like manner where the contract of service, by necessary implication arising out of the nature or the circumstances of the employment, required him not to quit the service of his employer suddenly and without reasonable notice of his intention to do so. But the vital question remains: Whether a court of equity will, under any circumstances, by injunction, prevent one individual from quitting the personal service of another? An affirmative answer to this question is not, we think, justified by any authority to which our attention has been called or of which we are aware. It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. One who is placed under such constraint is in a condition of involuntary servitude—a condition which the supreme law of the land declares shall not exist within the United States or in any place subject to their jurisdiction. Courts of equity have sometimes sought to sustain a contract for services requiring special knowledge or skill by enjoining acts or conduct that would constitute a breach of such contract.

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"The rule, we think, is without exception that equity will not compel the actual, affirmative performance by an employee of merely personal services, any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him for service of that character. The right of an employee engaged to perform personal service to quit that service rests upon the same basis as the right of his employer to discharge him from further personal service. If the quitting in the one case or the discharging in the other is in violation of the contract between the parties, the one injured by the breach has his action for damages; and a court of equity will not, indirectly or negatively, by means of an injunction restraining the violation of the contract, compel the affirmative performance from day to day or the affirmative acceptance of merely personal services. Relief of that character has always been regarded as impracticable."

Sitting with Justice Harlan at circuit in that case were other learned jurists, but there was no dissent from these views.

In this connection we cite from the luminous opinion by Judge Loring delivering the opinion in Pickett *v.* Walsh (192 Mass., 572), a clear exposition of our views here expressed. We regret the necessity of limiting the quotation, because the whole opinion could be studied with profit.

"The case is one of competition between the defendant unions and the individual plaintiffs for the work of pointing. The work of pointing for which these two sets of workmen are competing is work which the contractors are obliged to have. One peculiarity of the case, therefore, is that the fight here is necessarily a triangular one. It necessarily involves the two sets of competing workmen and the contractor, and is not confined to the two parties to the contract, as is the case where workmen strike to get better wages from their employer or other conditions which are better for them. In this respect the case is like Mogul Steamship Co. *v.* McGregor (23 Q. B. D., 598; S. C., on appeal (1892); A. C., 25).

"The right which the defendant unions claim to exercise in carrying their point in the course of this competition is a trade advantage, namely, that they have labor which the contractors want, or, if you please, can not get elsewhere; and they insist upon using this trade advantage to get additional work, namely, the work of pointing the bricks and stone which they lay. It is somewhat like the advantage which the owner of back land has when he has bought the front lot. He is not bound to sell them separately. To be sure, the right of an individual owner to sell both or none is not decisive of the right of a labor union to combine to refuse to lay bricks or stone unless they are given the job of pointing the bricks laid by them. There are things which an individual can do which a combination of individuals can not do. But having regard to the right on which the defendants' organization as a labor union rests, the correlative duty owed by it to others, and the limitation of the defendants' rights coming from the increased power of organization, we are of opinion that it was within the rights of these unions to compete for the work of doing the pointing and, in the exercise of their right of competition, to refuse to lay bricks and set stone unless they were given the work of pointing them when laid. (See in this connection Plant *v.* Woods, 176 Mass., 492, 502; Berry *v.* Donovan, 188 Mass., 353, 357.)

"The result to which that conclusion brings us in the case at bar ought not to be passed without consideration.

"The result is harsh on the contractors, who prefer to give the work to the pointers, because (1) the pointers do it by contract (in which case the contractors escape the liability incident to the relation of employer and employee); because (2) the contractors think that the pointers do the work better, and if not well done the buildings may be permanently injured by acid; and, finally, (3) because they get from the pointers better work with less liability at a smaller cost. Again, so far as the pointers (who can not lay brick or stone) are concerned, the result is disastrous. But all that the labor unions have done is to say you must employ us for all the work or none of it. They have not said that if you employ the pointers you must pay us a fine, as they did in Carew *v.* Rutherford (106 Mass., 1). They have not undertaken to forbid the contractors employing pointers, as they did in Plant *v.* Woods (176 Mass., 492). So far as the labor unions are concerned, the contractors can employ pointers if they choose, but if the contractors choose to give the work of pointing the bricks and stones to others the unions take the stand that the contractors will have to get some one else to lay them. The effect of this in the case at bar appears to be that the contractors are forced against their will to give the work of pointing to the masons and bricklayers. But the fact that the contractors are forced to do what they do not want to do is not decisive of the legality of the labor union's acts. That is true wherever a strike is successful. The contractors doubtless would have liked it better if there had been no competition between the bricklayers' and masons' unions on the one hand and the individual pointers on the other hand. But there is competition. There being competition, they prefer the course they have taken. They prefer to give all the work to the unions rather than get nonunion men to lay bricks and stone to be pointed by the plaintiffs.

"Further, the effect of complying with the labor unions' demands apparently will be the destruction of the plaintiff's business. But the fact that the business of a plaintiff is destroyed by the acts of the defendants done in pursuance of their right of competition is not decisive of the illegality of the acts. It was well said by Hammond, J., in Martell *v.* White (185 Mass., 255, 260) in regard to the right of a citizen to pursue his business without interference by a combination to destroy it: 'Speaking generally, however, competition in business is permitted, although frequently disastrous to those engaged in it. It is always selfish, often sharp, and sometimes deadly.'

* * * * * * *

"The application of the right of the defendant unions, who are composed of bricklayers and stonemasons, to compete with the individual plaintiffs, who can do nothing but pointing (as we have said), is in the case at bar disastrous to the pointers and hard on the contractors. But this is not the first case where the exercise of the right of competition ends in such a result. The case at bar is an instance where the evils which are or may be incident to competition bear very harshly on those interested, but in spite of such evils competition is necessary to the welfare of the community."

To the same effect is Allis-Chalmers Co. *v.* Iron Molders' Union (C. C.) (150 Fed. Rep., 155), per Sanborn, J.

The consensus of judicial view, as expressed in these cases and others which might be cited, is that workingmen may lawfully combine to further their material interests without limit or constraint, and may for that purpose adopt any means or mehods which are lawful. It is the enjoyment and exercise of that right and none other that this bill forbids the courts to interfere with.

The second clause:

"Or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working."

This language is taken from the British trades dispute act of 1906, the second section of which is as follows:

"It shall be lawful for one or more persons acting on their own behalf or on behalf of an individual, corporation, or firm in contemplation or furtherance of a trade dispute to attend at or near a house or place where a person resides or works or carries on business or happens to be if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from work."

This, it has been said, "might well be termed a codification of the law relating to peaceful picketing as laid down by a majority of the American courts." (Martin's Law of Labor Unions, sec. 173.) Upon the general subject the same author says:

"There are some decisions which hold that all picketing is unlawful, and it has been said that from the very nature of things peaceful picketing is of rare occurrence and "very much of an illusion," yet the view taken by the majority of decisions and which is best supported by reason is that picketing, if not conducted in such numbers as will of itself amount to intimidation, and when confined to the seeking of information such as the number and names and places of residence of those at work or seeking work on the premises against which the strike is in operation, and to the use of peaceful argument and entreaty for the purpose of procuring such workmen to support the strike by quitting work or by not accepting work, is not unlawful, and will furnish no ground for injunction or an action at law for damages. * * * That the views set forth in this section are correct does not admit of doubt. Indeed, it may readily be seen that the right almost universally conceded to striking workmen to use peaceable argument and persuasion to induce other workmen to aid them in their strike might, and very probably would be, most seriously hampered if the right of picketing were denied. "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment." While it is true that in the guise of picketing strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault, yet it can always be determined from the evidence whether the efforts of the pickets are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free

judgment." (Martin's Modern Law of Labor Unions, sec. 169, pp. 233, 234, and 235.)

The third clause:

"Or from ceasing to patronize or to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means so to do."

The best opinion to be gathered from the conflicting opinions on this matter have been well summarized in the most recent textbook on the subject as follows:

"It is lawful for members of a union, acting by agreement among themselves, to cease to patronize a person against whom the concert of action is directed when they regard it for their interest to do so. This is the so-called 'primary boycott,' and in furtherance thereof it is lawful to circulate notices among the members of the union to cease patronizing one with whom they have a trade dispute and to announce their intention to carry their agreement into effect. For instance, if an employer of labor refuses to employ union men the union has a right to say that its members will not patronize him. A combination between persons merely to regulate their own conduct and affairs is allowable, and a lawful combination, though others may be indirectly affected thereby. And the fact that the execution of the agreement may tend to diminish the profits of the party against whom such act is aimed does not render the participants liable to a prosecution for a criminal conspiracy or to a suit for injunction. Even though he sustain financial loss, he will be without remedy, either in a court of law or a court of equity. So long as the primary object of the combination is to advance its own interests and not to inflict harm on the person against whom it is directed, it is not possible to see how any claim of illegality could be sustained." (Martin's Modern Law of Labor Unions, pp. 107, 108, and 109.)

"It is not unlawful for members of a union or their sympathizers to use, in aid of a justifiable strike, peaceable argument and persuasion to induce customers of the person against whom the strike is in operation to withhold their patronage from him, although their purpose in so doing is to injure the business of their former employer and constrain him to yield to their demands, and the same rule applies where the employer has locked out his employees. These acts may be consummated by direct communication or through the medium of the press, and it is only when the combination becomes a conspiracy to injury, by threats and coercion, the property rights of another that the power of the courts can be invoked. The vital distinction between combinations of this character and boycotts is that here no coercion is present, while, as was heretofore shown, coercion is a necessary element of a boycott. In applying the principles stated it has been held that the issuance of circulars by members of a labor union notifying persons engaged in the trade of controversies existing between such members and their employer and requesting such persons not to deal with the employer is not unlawful and will not be enjoined where no intimidation or violence is used." (Martin's Modern Law of Labor Unions, pp. 109 and 110.)

Said Mr. Justice Van Orsdel in his concurring opinion in Court of Appeals of the District of Columbia (the American Federation of Labor et al., appellants, *v.* The Bucks Stove & Range Co., No. 1916, decided Mar. 11, 1909):

* * * * * * *

"Applying the same principle, I conceive it to be the privilege of one man, or a number of men, to individually conclude not to patronize a certain person or corporation. It is also the right of these men to agree together, and to advise others, not to extend such patronage. That advice may be given by direct communication or through the medium of the press, so long as it is neither in the nature of coercion or a threat.

"As long as the actions of this combination of individuals are lawful, to this point it is not clear how they can become unlawful because of their subsequent acts directed against the same person or corporation. To this point there is no conspiracy—no boycott. The word "boycott" is here used as referring to what is usually understood as "the secondary boycott," and when used in this opinion it is intended to be applied exclusively in that sense. It is, therefore, only when the combination becomes a conspiracy to injure by threats and coercion the property rights of another that the power of the courts can be invoked. This point must be passed before the unlawful and unwarranted acts which the courts will punish and restrain are committed.

"The definition of a boycott given by Judge Taft in Toledo Co. *v.* Penna. Co. (54 Fed., 730) is as follows: 'As usually understood, a boycott is a combination of many to cause a loss to one person by coercing others against their will to withdraw from him their beneficial business intercourse through threats that, unless those others do so, the many will cause similar loss to them.' In Gray *v.* Building Trades Council (91 Minn., 171) the word 'boycott' is defined as follows: 'A boycott may be defined to be a combination of several persons to cause a loss to a third person by causing others against their will to withdraw from him their beneficial business intercourse through threats that unless a compliance with their demands be made the persons forming the combination will cause loss or injury to him, or an organization formed to exclude a person from business relations with others by persuasion, intimidation, and other acts which tend to violence, and thereby cause him through fear of resulting injury to submit to dictation in the management of his affairs. Such acts constitute a conspiracy and may be restrained by injunction.' In Brace Bros. *v.* Evans (3 R. & Corp. L. J., 561) it is said: 'The word itself implies a threat. In popular acceptation it is an organized effort to exclude a person from business relations with others by persuasion, intimidation, and other acts which tend to violence, and they coerce him, through fear of resulting injury, to submit to dictation in the management of his affairs.'

"It will be observed that the above definitions are in direct conflict with the earlier English decisions and indicate a distinct departure by our courts. This undoubtedly is in recognition of the right of a number of individuals to combine for the purpose of improving their condition. The rule of the English common law, from which we have so far departed, is expressed in Bowen *v.* Hall (6 Q. B. Div., 333) as follows: 'If the persuasion be used for the indirect purpose of injuring the plaintiff, or of benefiting the defendant at the expense of the plaintiff, it is a malicious act, which is in law and in fact a wrong act, and therefore a wrongful act, and therefore an actionable act if injury ensues from it.'

"From this clear distinction it will be observed that there is no boycott until the members of the organization have passed the point of refusing to patronize the person or corporation themselves and have entered the field where, by coercion or threats, they prevent others from dealing with such persons or corporation. I fully agree with this distinction.

"So long, then, as the American Federation of Labor and those acting under its advice refused to patronize complainant, the combination had not arisen to the dignity of an unlawful conspiracy or a boycott."

In Hopkins *v.* Oxley Stave Co. (83 Fed. R., 912), Judge Caldwell, in a dissenting opinion, said:

"While laborers, by the application to them of the doctrine we are considering, are reduced to individual action, it is not so with the forces arrayed against them. A corporation is an association of individuals for combined action; trusts are corporations combined together for the very purpose of collective action and boycotting; and capital, which is the product of labor, is in itself a powerful collective force. Indeed, according to this supposed rule, every corporation and trust in the country is an unlawful combination, for while its business may be of a kind that its individual members, each acting for himself, might lawfully conduct, the moment they enter into a combination to do that same thing by their combined effort the combination becomes an unlawful conspiracy. But the rule is never so applied.

"Corporations and trusts and other combinations of individuals and aggregations of capital extend themselves right and left through the entire community, boycotting and inflicting irreparable damage upon and crushing out all small dealers and producers, stifling competition, establishing monopolies, reducing the wages of the laborer, raising the price of food on every man's table and of the clothes on his back and of the house that shelters him, and inflicting on the wage earners the pains and penalties of the lockout and the black list, and denying to them the right of association and combined action by refusing employment to those who are members of labor organizations; and all these things are justified as a legitimate result of the evolution of industries resulting from new social and economic conditions, and of the right of every man to carry on his business as he sees fit, and of lawful competition. On the other hand, when laborers combine to maintain or raise their wages or otherwise to better their condition or to protect themselves from oppression or to attempt to overcome competition with their labor or the products of their labor in order that they may continue to have employment and live, their action, however open, peaceful, and orderly, is branded as a 'conspiracy.' What is 'competition' when done by capital is 'conspiracy' when done by laborers. No amount of verbal dexterity can conceal or justify this glaring discrimination. If the vast aggregation and collective action of capital is not accompanied by a corresponding organization and collective action of labor, capital will speedily become proprietor of the wage earners as well as the recipient of the profits of their labor. This result can only be averted by some sort of organization that will secure the collective action of wage earners. This is demanded, not in the interest of wage earners alone, but by the highest considerations of public policy."

In Vegelahn *v.* Gunter (167 Mass., 92), Justice Holmes, now of the Supreme Court of the United States, said:

"It is plain from the slightest consideration of practical affairs, or the most superficial reading of industrial history, that free competition means combination and that the organization of the world, now going on so fast, means an ever-increasing might and scope of combination. It seems to me futile to set our faces against this tendency. Whether beneficial on the whole, as I think it is, or detrimental, it is inevitable, unless the fundamental axioms of society and even the fundamental conditions of life are to be changed. One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is potent and powerful. Combination on the other is a fair and equal way. * * * If it be true that the workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty that combined capital has to support their interest by argument, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control."

The logic of Justice Sherwood, of the Supreme Court of Missouri, in Marx & Haas Co. *v.* Watson (56 L. R. A., 951), appears unanswerable. He discussed the question from a constitutional standpoint, taking for his text the Missouri bill of rights, substantially the same as the first amendment to the Federal Constitution, saying (p. 956):

"The evident idea of that section is penalty or punishment, and not prevention, because if prevention exists, then no opportunity can possibly arise for one becoming responsible by saying, writing, or publishing 'whatever he will on any subject.' The two ideas—the one absolute freedom 'to say, write, or publish whatever he will on any subject,' coupled with responsibility therefor, and the other idea of preventing any such free speech, free writing, or free publication—can not coexist."

The opinion continues, after citing authorities, Federal and State, as follows:

"Section 14, supra, makes no distinction and authorizes no difference to be made by courts or legislatures between a proceeding set on foot to enjoin the publication of a libel and one to enjoin the publication of any other sort or nature, however injurious it may be, or to prohibit the use of free speech or free writing on any subject whatever, because wherever the authority of injunction begins there the right of free speech, free writing, or free publication ends. No halfway house stands on the highway between absolute prevention and absolute freedom."

The fourth clause:

"Or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value."

In at least two instances State courts (Reynolds *v.* Davis, 198 Mass., 294, and A. S. Barnes & Co. *v.* Chicago Typographical Union, 232 Ill., 424) have held that if the purpose of a strike was unlawful the officers and members of unions should be enjoined from giving financial aid in the form of strike benefits in furtherance thereof. But in the only case of the kind disposed of by a Federal court an entirely different conclusion was reached. In A. S. Barnes & Co. *v.* Berry (157 Fed. R., 883) it was held without exception or qualification that an employer against whom a strike was in operation could not have enjoined the officers of a union from giving its striking members strike benefits. The reason assigned was that—

"the strike benefit fund is created by moneys deposited by the men with the general officers for the support of themselves and families in times of strike, and the court has no more control of it than it would have over deposits made by them in the banks."

This decision is in harmony with two recent English decisions—Denabey, etc., Collieries *v.* Yorkshire Miners' Assn. (75 L. J. K. B., 384); Lyons *v.* Wilkins (67 L. J., ch. 383).

The fifth and sixth clauses:

"Or from peaceably assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto."

After all that can be asserted against the provisions of section 266c, or any provision of the bill elsewhere found has been said, we can truly say that it does not transcend or contravene the clear and conclusive

statement of the law as stated in National Fireproofing Co. *v.* Mason Builders Association (169 Fed. Rep., 260). Delivering the opinion of the court in that case, Judge Noyes said (p. 265):

"As a general rule, it may be stated that when the chief object of a combination is to injure or oppress third persons it is a conspiracy; but that when such injury or oppression is merely incidental to the carrying out of a lawful purpose it is not a conspiracy. Stated in another way: A combination, entered into for the real malicious purpose of injuring a third person in his business or property, may amount to a conspiracy and furnish a ground of action for damages sustained or call for an injunction, even though formed for the ostensible purpose of benefiting its members, and actually operating to some extent to their advantage. But a combination without such ulterior oppressive object entered into merely for the purpose of promoting by lawful means the common interests of its members, is not a conspiracy. A laborer, as well as a builder, trader, or manufacturer, has the right to conduct his affairs in any lawful manner, even though he may thereby injure others. So several laborers and builders may combine for mutual advantage, and so long as the motive is not malicious, the object not unlawful nor oppressive, and the means neither deceitful nor fraudulent, the result is not a conspiracy, although it may necessarily work injury to other persons. The damage to such persons may be serious—it may even extend to their ruin—but if it is inflicted by a combination in the legitimate pursuit of its own affairs is a damnum absque injuria. The damage is present, but the unlawful object is absent. And so the essential question must always be, whether the object of a combination is to do harm to others or to exercise the rights of the parties for their own benefit."

Any attack upon the policy of this section of the bill must be directed at its specific prohibitions; nor will any mere general criticism, or any attack which does not particularize herein, be worthy of serious attention. The ready and perfect defense to all such is at hand, and imposes no difficult task. Is there any reason why the complainant, seeking an injunction against workingmen, should not describe with particularity in his cause of complaint the nature of the threatened injury and the property or property right involved, as in other cases? Is there any reason why an injunction should issue at all involving or growing out of the relation created between employer and employee to prevent the termination of the relation, or advising and persuading others to do so, or to prevent the unrestricted communication and exchange of information between persons, or the giving of aid by financial contributions in any labor affair or dispute? Is there any reason, after a labor dispute has arisen and a socially hostile attitude has been created, for an injunction to prevent abstinence in patronizing or service by one party for the other's benefit, or the exercise of the right of free speech in advising or inducing such abstinence on the part of others? Is there, in short, any good reason why, after a dispute has arisen and the parties are "at arms length," a court of equity should interpose its strong arm merely because such dispute has arisen?

At its hearings the committee had the benefit of learned and illuminating arguments against the several bills. Counsel in opposition were patiently and respectfully heard, and the committee profited largely by having heard them, as is shown by the results of its labors. The bill does not interfere with the Sherman Antitrust Act at all; it leaves the law of conspiracy untouched, and is not open to effective criticism on any constitutional ground. The subject of the constitutionality of such legislation was exhausted at the hearings on the contempt bill (H. R. 22591), returned to the House with a separate report, in which all constitutional objections are fully met.

NO QUESTION OF CONSTITUTIONALITY INVOLVED.

This bill does not, any more than does the contempt bill, invade the jurisdiction of the courts or attempt legislatively to exercise a judicial function. It merely limits and circumscribes the remedy and procedure. While we here enter into no elaborate discussion of the authorities on this topic, yet, for convenience of reference, we insert a synopsis. On point of inconsistency between our theory of government and exercise of arbitrary power see Yick Wo *v.* Hopkins (118 U. S. Rep., 369). For a case in which Congress was held to have constitutionally exercised power to take away all remedy see Finck *v.* O'Neill (106 U. S., 272); and for a case where a statute taking away the power to issue an injunction in a certain case wherein the jurisdiction had been previously held and exercised was recognized without question as of binding force see Sharon *v.* Terry (36 Fed. Rep., 365). For a general statement of the proposition that the inferior courts of the United States are all limited in their nature and constitutions and have not the powers inherent in courts existing by prescription or by the common law see Cary *v.* Curtiss (3 How. (U. S.), 236, 254). The same principle still more elaborately stated and applied, Ex parte Robinson (19 Wall. (U. S.), 505).

Many decisions on the question of injunctive process and jurisdiction in labor cases are greatly influenced by, and, indeed, sometimes founded upon, precedents established when to be a wage earner was to be a servant whose social and legal status was little above that of slavery. But even England has preceded us in new views and policies herein. The English act of 1906, set forth at length in the hearings, goes further than it has yet been deemed possible to go in this country in relieving labor, and especially organized labor, of legal burdens and discriminations. The Supreme Court has more than once protested against attempts by any branch of the Government to exercise arbitrary power, and the courts should, and probably will, welcome the definite limitations contained in this bill if it should be enacted.

The idea has been advanced, and ably supported in argument, by one of the proponents of this legislation that liberty, and more of it, is safe in the hands of the workingmen of the country. We are convinced of the merit and truth of that contention. The tendency toward freedom and liberation from legal trammels and impediments to progress and to a great social advance is seen in nearly all civilized nations. It is an unpropitious time to oppose a reform like that embodied in this bill, in view of the fact that the abuses of power which it seeks to terminate have been, admittedly, numerous and flagrant.

[H. R. 23635, Sixty-second Congress, second session.]

IN THE HOUSE OF REPRESENTATIVES,
April 22, 1912.

Mr. CLAYTON introduced the following bill, which was referred to the Committee on the Judiciary and ordered to be printed:

A bill to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911.

Be it enacted, etc., That section 263 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, be, and the same is hereby, amended so as to read as follows, and that said act be further amended by inserting after section 266 thereof three new sections, to be numbered, respectively, 266a, 266b, 266c, reading as follows:

"SEC. 263. That no injunction, whether interlocutory or permanent, in cases other than those described in section 266 of this title, shall be issued without previous notice and an opportunity to be heard on behalf of the parties to be enjoined, which notice, together with a copy of the bill of complaint or other pleading upon which the application for such injunction will be based, shall be served upon the parties sought to be enjoined a reasonable time in advance of such application. But if it shall appear to the satisfaction of the court or judge that immediate and irreparable injury is likely to ensue to the complainant, and that the giving of notice of the application or the delay incident thereto would probably permit the doing of the act sought to be restrained before notice could be served or hearing had thereon, the court or judge may, in his discretion, issue a temporary restraining order without notice. Every such order shall be indorsed with the date and hour of issuance, shall be forthwith entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed seven days, as the court or judge may fix, unless within the time so fixed the order is extended or renewed for a like period, after notice to those previously served, if any, and for good cause shown, and the reasons for such extension shall be entered of record.

"SEC. 266a. That no restraining order or interlocutory order of injunction shall issue except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

"SEC. 266b. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained; and shall be binding only upon the parties to the suit, their agents, servants, employees, and attorneys, or those in active concert with them, and who shall by personal service or otherwise have received actual notice of the same.

"SEC. 266c. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means so to do; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto."

ACTS OF CONGRESS RELATING TO INJUNCTIONS.

Act of September 24, 1789, "An act to establish the judicial courts of the United States":

"SEC. 14. *And be it further enacted*, That all the beforementioned courts of the United States shall have power to issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute which may be necessary for the exercise of their respective jurisdictions and agreeable to the principles and usages of law. And that either of the justices of the Supreme Court, as well as judges of the district courts, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment: *Provided*, That writs of habeas corpus shall in no case extend to prisoners in gaol, unless where they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify.

* * * * *

"SEC. 16. *And be it further enacted*, That suits in equity shall not be sustained in either of the courts of the United States in any case where plain, adequate, and complete remedy may be had at law."

Act of March 2, 1793, "An act in addition to the act entitled 'An act to establish judicial courts of the United States'":

"SEC. 5. *And be it further enacted*, That writs of ne exeat and of injunction may be granted by any judge of the Supreme Court in cases where they might be granted by the supreme or a circuit court; but no writ of ne exeat shall be granted unless a suit in equity be commenced, and satisfactory proof shall be made to the court or judge granting the same that the defendant designs quickly to depart from the United States; nor shall a writ of injunction be granted to stay proceedings in any court of a State; nor shall such writ be granted in any case without reasonable previous notice to the adverse party, or his attorney, of the time and place of moving for the same."

Act of June 1, 1872, "An act to further the administration of justice":

"SEC. 7. That whenever notice is given of a motion for an injunction out of a circuit or district court of the United States, the court or judge thereof may, if there appear to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion. Such order may be granted with or without security, in the discretion of the court or judge: *Provided*, That no justice of the supreme court shall hear or allow any application for an injunction or restraining order except within the circuit to which he is allotted, and in causes pending in the circuit to which he is allotted, or in such causes at such place outside of the circuit as the parties may in writing stipulate, except in causes where such application can not be heard by the circuit judge of the circuit or the district judge of the district."

Section 7 of the act of June 1, 1872, above quoted, is carried forward in section 717, section 718, and section 719 of the Revised Statutes (1873 and 1878), which are as follows:

"SEC. 717. Writs of ne exeat may be granted by a justice of the supreme court in cases where they might be granted by the supreme

court, and by circuit justice or circuit judge in cases where they might be granted by the circuit court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States.

"SEC. 718. Whenever notice is given of a motion for an injunction out of a circuit or district court, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion; and such order may be granted with or without security in the discretion of the court or judge.

"SEC. 719. Writs of injunction may be granted by any justice of the supreme court in cases where they might be granted by the supreme court, and by any judge of a circuit court in cases where they might be granted by such court. But no justice of the supreme court shall hear or allow any application for an injunction or restraining order in any cause pending in the circuit to which he is allotted, elsewhere than within such circuit, or at such place outside of the same as the parties may stipulate in writing, except when it can not be heard by the circuit judge of the circuit or the district judge of the district. And an injunction shall not be issued by a district judge, as one of the judges of the circuit court, in any case where a party has had a reasonable time to apply to the circuit court for the writ; nor shall any injunction so issued by a district judge continue longer than to the circuit court next ensuing, unless so ordered by the circuit court."

The present law is contained in the following sections of the Judicial Code, approved March 3, 1911, and effective January 1, 1912:

"SEC. 129. Where upon a hearing in equity in a district court, or by a judge thereof in vacation, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, or an interlocutory order or decree shall be made appointing a receiver, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve an injunction, or appointing a receiver, to the circuit court of appeals, notwithstanding an appeal in such case might, upon final decree under the statutes regulating the same, be taken directly to the supreme court: *Provided*, That the appeal must be taken within 30 days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court, or the appellate court, or a judge thereof, during the pendency of such appeal: *Provided, however*, That the court below may, in its discretion, require as a condition of the appeal an additional bond.

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"SEC. 263. Whenever notice is given of a motion for an injunction out of a district court, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion; and such order may be granted with or without security, in the discretion of the court or judge.

* * * * * * *

"SEC. 264. Writs of injunction may be granted by any justice of the supreme court in cases where they might be granted by the supreme court; and by any judge of a district court in cases where they might be granted by such court. But no justice of the supreme court shall hear or allow any application for an injunction or restraining order in any cause pending in the circuit to which he is allotted elsewhere than within such circuit or at such place outside of the same as the parties may stipulate in writing, except when it can not be heard by the district judge of the district. In case of the absence from the district of the district judge, or of his disability, any circuit judge of the circuit in which the district is situated may grant an injunction or restraining order in any case pending in the district court where the same might be granted by the district judge.

* * * * * * *

"SEC. 266. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute shall be issued or granted by any justice of the supreme court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a Justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the supreme court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the supreme court or to a judge he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however*, That one of such three judges shall be a justice of the supreme court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided*, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the supreme court or any circuit or district judge may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

[House Report No. 612, part 2, Sixty-second Congress, second session.]

REGULATION OF INJUNCTIONS.

Mr. MOON of Pennsylvania, from the Committee on the Judiciary, submitted the following as the views of the minority, to accompany H. R. 23635:

The undersigned members of the Judiciary Committee, to whom was referred the bill (H. R. 23635) to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," etc., which bill has been reported favorably, beg leave to submit herewith their views in opposition to the enactment of said measure,

The first section of the bill is intended as a substitute for the existing law on the subject of injunctions as found in section 263 of the Judicial Code, and the subsequent sections are intended to be supplementary to section 266 of the code.

According to the report of the majority of this committee, this bill intends to correct "the too ready issuance of injunctions, or the issuance without proper precautions or safeguards." If the report is predicated upon the "too ready issuance of injunctions," it is singular that it does not disclose a single case upon which the opinion of the majority could be founded. We are well aware of the charges iterated and reiterated before congressional committees alleging abuses in the issuance of injunctions. We have not found any more evidence to support them in the past than we now find in the report of the committee. We thoroughly believe, with the Supreme Court of the United States, "that no injunction ought to be granted except in a case reasonably free from doubt. We think such rule is and will be followed by all the judges of the Federal courts."

The minority members have at all times been willing to assent to a rational proposal to further safeguard the issuance of injunctions against even the possibility of abuse, and have introduced a bill for that purpose; but we can not consent to proposals which would operate to deprive the writ of half its efficiency in all cases and to determine its application in many instances by the character of the parties to the controversy rather than the nature of the wrong which is to be remedied. We think, furthermore, that the majority report is founded upon a misconception of the course of judicial decision respecting statutes regulating the issuance of injunctions, and that the legislation proposed is impracticable, invalid, in the interests of a class rather than of the community, and proposes standards of legality without parallel or precedent in our legislation.

To make our position clearer, we consider the bill in the order pursued in Report No. 612:

I.

Preliminary to a discussion of the bill, the majority gives an historical résumé of legislation respecting notice in injunction cases. We believe essential elements of that history have not received the consideration deserved from the majority, and we must disagree with them respecting conclusions drawn from both the legislation and judicial decisions of the past respecting that legislation.

On the 2d of March, 1793, was enacted legislation of which the following was a part:

"Nor shall any writ of injunction issue in any case without reasonable previous notice to the adverse party or his attorney of the time and place of moving the same." (Ch. 22, vol. 1, U. S. Stat. L., p. 534.)

The majority concludes:

"The will of Congress as thus expressed was completely thwarted and the statute nullified by the peculiar construction placed upon it by the courts."

It appears to us the majority and not the courts, have misconstrued the will of Congress. They overlook, as the court did not, the distinction described in all authoritative textbooks, familiar to every lawyer and pointed out with striking distinctness by the courts, between restraining orders intended to preserve the status quo to protect the subject matter of litigation and the preliminary and final injunctions which are issued, if at all, after hearing upon the application for the equitable remedy. That the statute in question should not be construed to prevent the issuance of restraining orders was natural and inevitable. It was a practice recognized by the English chancery from time immemorial. The early English textbooks speak of it as well understood and essential, as, for instance, Eden on Injunctions, 1821; Adams Equity, 1845.

Had the court construed the act of Congress to forbid the preservation of the subject matter of litigation until the respective rights of the litigants could be adjudicated, it would have obviously given a construction against the very essentials of justice. Indeed, the majority recognizes and admits this by its own proposal, for while it criticizes the construction which permits the issuance of restraining orders without notice under special circumstances it provides in section 263 of its own bill for the doing of the very thing which it criticizes the courts for having done.

We call attention to the English practice, because it was early held respecting the judicial power of the courts of the Union in equity that:

"The usages of the high court of chancery in England whenever the jurisdiction is exercised govern the proceedings. This may be said to be the common law of chancery, and since the organization of the Government it has been observed." (Penn. *v.* Wheeling, etc., Bridge Co., 13 How., 563; Meade *v.* Beale, 1 Campbell's Reports, 339, C. C. M. D. Tawney, 1850; Loring et al. *v.* Marsh, 2 Clifford's Reports, 469.)

Thus, the courts did not "get around" the statute, as is suggested by the majority, but construed it in accordance with an immemorial practice of English jurisprudence which recognized the necessity of issuing restraining orders under special circumstances that the court might preserve the status quo, protect the subject matter of litigation, and preserve from destruction that upon which it was to pass judgment.

The report implies that the case of New York *v.* Connecticut (4 Dall., 1) upheld a construction which forbade the issuance of even restraining orders without notice. That issue is not presented in that case, decided in 1799. The practice was first recognized four years before in the case of Schermerhorn *v.* L'Espenasse (2 Dall., 360). In this case the defendants, merchants of Amsterdam, had executed to the complainant power of attorney to receive for his own use the interest due on $180,000 of certificates of the United States, bearing interest at 6 per cent from the 1st of January, 1788, to the 31st of December, 1790, amounting to $32,400. Notwithstanding this assignment, the defendants, on the 16th of June, 1792, received certificates for the interest and funded the amount at 3 per cent in their own names. The bill prayed relief according to the equity of the case and a restraining order to prevent the defendants from transferring the stock or receiving the principal or interest. On the bill exhibited of the power of attorney and affidavits to the effect that the stock was registered in the name of the defendants on the books of the Treasurer the restraining order was granted. No subpœna was served until Mr. Lewis, on behalf of the defendants, moved for a rule to show cause why the injunction should not be dissolved. The motion was refused. An examination of the record discloses that Mr. Lewis, counsel for the defendants, supported his motion for dissolution on two grounds:

"That the injunction was issued irregularly, as there was no affidavit made of the truth of the allegations contained in the bill."

In supporting this he said:

"He did not object because the injunction was issued before a subpœna was served, as there were various cases in which justice could not otherwise be obtained."

This proceeding was had two years after the passage of the statute of 1793 before a justice of the Supreme Court who had been a Member of the Congress which had enacted the statute; the hearing was held in a building adjoining that in which the act was passed and in the same district where the Congress was sitting. It demonstrates as no other case can the well-recognized equity practice in relation to temporary restraining orders, and shows the construction placed upon the statute by the profession and the court. In the meantime the practice of issuing restraining orders without notice under special circumstances of necessity was approved through the exercise of the power by the highest authority, including various justices of the circuit and district courts and Chief Justice Marshall (who is observed to issue an ex parte restraining order to prevent moneys alleged to have been improperly allowed by an administrator from being taken out of the country). (Green et al. *v.* Hanberry's Executors, 2 Brockenbrough's Reports, 405, Nov., 1839; Love *v.* Fendall's Trustees, 1 Cranch C. C., 34; Marsh et al. *v.* Bennett, 5 McLean, 117; Crane *v.* McCoy, 1 Bond's Reports, 422; *Mowrey v.* Indianapolis & C. R. Co., 17 Fed. Cas., 930.)

Too much space would be taken by the enumeration of cases of this character, and those cited are merely offered as examples.

Finally, during the debate upon the act of 1872, now section 263 of the Judicial Code, we find two of the most distinguished lawyers of the Senate expressing the recognized practice as follows:

"Mr. CARPENTER. I understand if any judge having the jurisdiction by law to grant an injunction has presented to him a bill in equity, fortified with proofs which entitle the party by the acknowledged and usual practice of a court of equity to have an injunction, the judge has no discretion to deny it.

"Mr. FRELINGHUYSEN. I think that elementary provision of the law even I may have been presumed to have heard and known of.

"Mr. CARPENTER. Therefore I was astonished to hear the Senator deny it.

"Mr. FRELINGHUYSEN. I did not deny it." (46 Congressional Globe, p. 2492.)

Thus we find the practice respecting restraining orders recognized by Congress, by the courts, and the profession throughout the history of our Government and its necessity appreciated by the majority from its incorporation in this bill. Indeed, we believe the right to issue a restraining order upon a proper showing of its necessity to protect a right of a pecuniary nature against irreparable damage is an essential part of the judicial power in equity. If a suitor over whom a court has jurisdiction by a bill in that court discloses a state of facts where irreparable harm is threatened and where, if notice were given, irreparable damage would be done before hearing could be had or decree entered, were deprived by the legislature of the right to such a remedy, we believe it would be equivalent to a legislative determination in advance that under no circumstances can a plaintiff disclose a threatened irreparable injury without adequate remedy at law demanding immediate equitable intervention. If the Congress undertakes arbitrarily to determine in advance what a suitor would otherwise be entitled to as due process of law in a court of equity, we believe he would be deprived of a guaranteed constitutional right.

The first section of the bill, with one material exception, is almost an exact copy of a bill introduced in the Sixty-first Congress, known as the Moon bill. This bill was reintroduced in the present Congress, and was supported by the entire Republican membership of the Judiciary Committee.

The exception referred to has reference to the provision for the expiration of a restraining order granted by the court without notice. The Moon bill provided that the order should expire "within such time after service is made or notice given, which shall be made or given as speedily as possible, not to exceed seven days, as the judge or court shall fix." The proposed bill provides that "it shall expire at such time after entry as the court or judge shall fix, not to exceed seven days," etc.

A restraining order is of no effect until served, and under such a provision it would be only necessary for those having knowledge of the application to avoid service for seven days after the issuance of the order to defeat its purpose. We can conceive circumstances in which a few who might be served would notify other defendants to avoid it and on failure to make the order effective by service within seven days it would be necessary to give notice to all previously served before an extension of further time could be had. We can conceive of no more certain method of depriving a suitor of essential equitable protection. Many judicial districts of our country administer justice over vast areas in which the material circumstances of life must be taken into consideration. The proposal of this section is general. It applies to all forms of litigation, and in view of the physical as well as the personal difficulties attending the service of restraining orders under some circumstances we can not but believe that not only would many individual suitors suffer grievous injury, but we can from our public service and professional experience conceive many circumstances in which the public interest would be seriously jeopardized. All of these difficulties would be overcome if the restraining order should date from the time of service instead of the time of its entry.

II.

Section 266A provides that no restraining or interlocutory order shall issue except upon the giving of security against cost or damage.

Under the present practice this is within the discretion of the court, and while we should not be disposed to disagree with such a suggestion, we must again note that no reason is given for the suggested change which implies a failure upon the part of the courts to properly exercise this discretion. No evidence to this effect has been at any time submitted to the committee, nor do the majority offer any evidence to that effect as a reason for their action.

III.

Section 266B requires every restraining order or every injunctive order "to set forth the reasons for the issuance of the same to be specific in terms and describe in reasonable detail, and not by reference to the bill of complaint or other document the act or acts sought to be restrained"; it binds only the parties to the suit, "their agents, servants, employees, and attorneys or those in active concert with them, and who shall by personal services or otherwise have received actual notice of the same." This section is of general application. In support of this provision the majority point out that it is to be a safeguard against "dragnet or blanket injunctions," by which parties may be punished for contempt after "only constructive notice, equivalent in most cases to none at all."

Again, the majority asserts conditions as a basis for proposed legislation which are both unproven and unprovable. Nothing is clearer in the field of jurisprudence than the requirement that a respondent on a contempt charge must have actual notice of the existence of an order which he is accused of violating and that the order must have been unmistakably brought to his attention. (Bessette *v.* Conkey, 194 U. S.) All the Debbs cases, both in the circuit and district courts and on appeal, actually confirm this statement. The majority offer in proof of the necessity of their proposal merely an implication unwarrantedly reflecting upon the judiciary and without supporting proof of any character.

They have, moreover, properly provided in section 266 that every restraining order issued shall be accompanied by an entry stating the reasons for its issuance. It would be a useless waste of time to again set forth the reasons for the issuance of the order in the order itself, as is required by section 266B. Complaints are heard on every side against cumbersome and delaying procedure. This proposal multiplies the delays, difficulties, and inconveniences of procedure indefinitely. It requires every order to be a history, to repeat in irrelevant and cumbersome detail all the preliminary pleadings, and instead of enlightening the parties against whom it was issued the form suggested and the procedure prescribed would increase his confusion and doubt.

The majority point out that there is "no Federal statute to govern either the matter of making or form and contents of orders in injunctions," thereby inferring that this entire matter is left to the discretion or judgment of the judge granting the injunction. In this statement they entirely overlook the rules in equity of the Supreme Court of the United States binding upon all inferior Federal courts, prescribing with great minuteness and changed from time to time in accordance with the teaching of experience the forms of injunctive orders and forbidding the ceaseless repetition in decrees and orders of the contents of bills of complaint.

The effect of section 266B is to abolish the many rules in equity of the Supreme Court in conflict with it, representing the professional experience of a century, and amended from time to time to shorten procedure, increase the convenience, and protect the rights of litigants in the courts of the United States. The majority says section 266 does not change the best practice with respect to orders, but imposes the duty upon the courts in mandatory form to conform to correct rules as already established by judicial precedent. We respectfully submit that the equity rules of the Supreme Court express correct judicial precedents and that the majority have apparently overlooked this important fact.

The bill as reported would withdraw the application of the restraining order from parties not named in it and not in agreement with the parties named who may on their own initiative undertake its violation. Such cases are not uncommon. If the majority intend to exempt such violations of the order, they have created an unusual and remarkably privileged class of lawbreakers; if not, we are unable to discern the intention expressed in the limitation "in active concert with them."

IV.

The two paragraphs of section 266C must be read in connection with each other or their purpose and meaning are lost. The first paragraph provides that no judge or court of the United States shall issue any restraining order or injunction "in any case between an employer and employees, or between employers and employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning the terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right," etc. If this section is intended to withdraw civil rights from equitable protection in this class of cases, we must disapprove it as an evident effort to deny such protection as is given to civil rights in all other classes of cases, since it is axiomatic that it is the office of equity to protect by injunction, under proper circumstances, civil and even personal as well as property rights. We object to the implication contained in emphasizing controversies between employers and employees, or between employees or persons employed and seeking employment, and if the majority intends by this to indicate that such rights are to have less or different protection from the same rights when involving controversies of another kind we must emphatically disagree with the principle implied, for in this country remedies are to be predicated at all times upon the character of the rights which are threatened, and not upon the class or nature of the persons involved in the controversy.

We do not comment upon the many cases cited by the learned members of the majority in support of their views upon equity pleadings in this connection. We quite agree with the correctness of such decisions, but we draw from them quite a different conclusion from that implied by the majority. We think they prove what the majority evidently adduces them to disprove. To us they are evidence that the pleadings required with such particularity in the special class of cases involved in section 266C are required generally in all applications for equitable intervention. The majority are thus seen to be offering as proof of the need of special legislation for pleadings in a particular class of cases the fact that the courts have substantially required such conditions and pleadings in all classes of cases of which the kind enumerated are a part.

The second paragraph of section 266C contains to our mind the most vicious proposal of the whole bill. It enumerates certain specific acts and provides that no restraining order or injunction shall prohibit the doing of them. Most of the acts thus recited are in themselves not amenable to the injunction process under existing law and practice. No court does or would enjoin them, but to declare by law that these acts should under no circumstances be restrained, we do not hesitate to say is a proposal without precedent in the legislative history of this country. No legislature has ever proposed that any act however innocent itself should be sanctified irrespective of the motive or purpose of the actor. "No conduct," says Mr. Justice Holmes in Aiken *v.* Wisconsin (195 U. S., 194), "has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot, neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law."

The majority have quoted various decisions in which particular acts under the pleadings presented to the court were held lawful and their prohibition denied. The same acts under other circumstances have been held unlawful and enjoined by the very courts, and in the course of the very decisions which the majority cites. Thus, in Arthur *v.* Oakes (63 Fed. Rep., 310), Mr. Justice Harlan is quoted to sustain the proposition that no man can by injunction be required to perform personal service for another, and in that decision Justice Harlan eliminated from the injunction the words "and from so quitting the service of the said receivers with or without notice as to cripple the property or prevent or hinder the operation of said railroad." The majority must observe, however, that Mr. Justice Harlan likewise held, "But different considerations must control in respect to the words in the same paragraph of the writs of injunction, and from combining and conspiring to quit

with or without notice the service of said receivers with the object and intention of crippling the property in their custody or embarrassing the operation of said railroad." Thus, the same act of quitting is lawful under one set of circumstances and unlawful under another, because the concerted action in the first instance, in the opinion of Mr. Justice Harlan, "is a very different matter from a combination and conspiracy among employees with the object and intent, not simply of quitting the service of the receivers because of the reduction of wages, but of crippling the property in their hands and embarrassing the operation of the railroad."

The majority undertakes to prescribe a set rule forbidding under any circumstances the enjoining of certain acts which may or may not be actuated by a malicious motive or be done for the purpose of working an unlawful injury or interfering with constitutional rights of employer or employee. In the same opinion Mr. Justice Harlan points out the impossibility of prescribing a set rule of this character and says, "The authorities all agree that a court of equity should not hesitate to use its power when the circumstances of the particular case in hand require it to be done in order to protect rights of property against irreparable damage by wrongdoers. It is as Justice Story said, 'because of the varying circumstances of cases that courts of equity constantly decline to lay down any rule which shall limit their power and discretion as to the particular cases in which such injunction shall be granted or withheld.'" and the authority proceeds, "there is wisdom in this course, for it is impossible to foresee all the exigencies of society which may require their aid and assistance to protect rights or redress wrongs. The jurisdiction of these courts thus operating by special injunction is manifestly indispensable for the purposes of social justice in a great variety of cases and therefore should be fostered and upheld by a steady confidence." (Story, Equity Jurisprudence, sec. 959B; Arthur *v.* Oakes, 63 Fed. Rep., 328.)

Among the acts which the second paragraph of section 266C declares shall not be restrained is to prohibit any person or persons to terminate any relation of employment, or from ceasing to perform any work or labor or from recommending or persuading others by peaceful means so to do; of peacefully persuading any person to work or to abstain from working, or from ceasing to patronize or employ any party to such dispute or from recommending, advising, or persuading others by peaceful means so to do, etc.

While many of these acts are in themselves entirely harmless and would never be enjoined by any court, yet under certain circumstances the same acts might become a weapon of lawless and destructive industrial warfare demanding the protection of the courts, this section would prevent the issuance of the injunction in the Debs case (In re Debs, 158 U. S., 564); it would prevent the issuance of the injunction in Toledo & Ann Arbor *v.* Pennsylvania Co. (54 Fed., 730); it would prevent the issuance of any injunction to restrain either workmen or employers who were the objects of the most vicious form of boycott that has been passed upon by the courts or can be devised by the ingenuity of boycotters. It changes the remedies by which the Sherman Act may be enforced, inasmuch as if any of these acts enumerated in section 266C were the means employed to enforce the restraint of trade or to damage the interstate business of any individual or corporation no injunction could be obtained either by a private individual or by the Government against such acts.

In the Debs case a combination sought to paralyze the railroads of the United States and prevent the carrying of the mail until the railroad companies would agree not to haul Pullman cars because of a controversy between the Pullman Co. and certain of its employees, who were not in the employ nor in any way related to the railroad companies. It is true there were acts of violence, but the general scheme was one of persuading all employees of the railroad companies to quit until the demands of the boycotters and strikers had been complied with. In the Toledo & Ann Arbor case the famous rule 12 of the brotherhood provided that none of its members should handle the cars of any carrier with which members of the brotherhood were in a dispute. In that case the brotherhood employees of the Pennsylvania refused to handle cars of the Toledo & Ann Arbor because of a dispute between that road and some of the brotherhood, and they threatened to quit the service of the Pennsylvania road unless it agreed to violate the provisions of the interstate-commerce act by not affording equal facilities to the cars of another road. No violence was threatened. The brotherhood merely undertook to "peacefully persuade" the Pennsylvania Co. not to handle the cars of the other road under a threat of leaving their service—a thing which they had a perfect right to do to better their own condition, but not for the purpose of compelling the Pennsylvania Railroad Co. to violate the law.

The majority report quotes at length from the case of Pickett *v.* Walsh (192 Mass., 572), "and regret the necessity of limiting the quotations, because the whole opinion could be studied with profit." We agree with the majority that the whole opinion could have been studied with profit, since it condemns forms of "peaceful persuasion" from which the majority would withdraw equitable intervention. Speaking of the case before it, it says: "It is a refusal to work for A, with whom the strikers have no dispute, because A works for B, with whom the strikers have a dispute, for the purpose of forcing A to force B to yield to the strikers' demands. * * * It is a combination by the union to obtain a decision in their favor by forcing other persons who have no interest in the dispute to force the employer to decide the dispute in their favor. Such a strike is an interference with the right of the plaintiffs to pursue their calling as they think best. In our opinion organized labor's right to coercion or compulsion is limited to strikes against the persons with whom the person has a trade dispute; or, to put it in another way, we are of the opinion that a strike against A, with whom the strikers have no trade dispute, to compel A to force B to the strikers' demands is unjustifiable interference with the right of A to carry on his calling as he thinks best. Only two cases to the contrary have come to our attention, namely, Bohm Manufacturing Co. *v.* Hollis (54 Minn., 223) and Jeans Clothing Co. *v.* Watson (168 Mo., 133)."

This case which the majority believe could be "studied with profit" is squarely against the proposal of their bill, and the two cases alluded to as being the only ones known to the court contrary to such view, for both have been overruled. Bohm Manufacturing Co. (54 Minn., 223) was overruled in Gray *v.* Building Trades Council (91 Minn., 171). The second case is alluded to by the majority of the committee in support of its contentions, and the majority declare the logic of the court in that case "appears unanswerable." This "unanswerable" logic was overruled by the Supreme Court of Missouri in Lohse Patent Door Co. *v.* Fuel (215 Mo., 421).

The majority report also quotes in support of their contention from Vagelahm *v.* Gunter (167 Mass., 92), saying, "Justice Holmes, now of the Supreme Court of the United States, delivered the opinion." The opinion was delivered by Mr. Justice Allen and is squarely against the contention of the majority, Mr. Justice Holmes having delivered a dissenting opinion, in which he stood alone. The majority have been driven to the necessity of quoting from other dissenting opinions in support of their opposition, and to these we do not deem it necessary to give attention.

It is said by the majority that no question of constitutionality is involved. We submit that if the measure is to be construed, as it evidently is, to prevent the application of injunctive relief to certain acts in disputes between employer and employee which may be part of a scheme or plan to work irreparable injury, which acts could be enjoined in any other department of litigation, it is obvious that the parties affected would be denied the equal protection of the law and due process of law, coming well within the rule laid down in Connelly *v.* The Union Sewer Pipe Co. (184 U. S., 540); Goldberg *v.* Stablemen's Union (149 Cal., 429); Pierce *v.* Stablemen's Union (156 Cal., 70); and Niagara Fire Insurance Co. *v.* Cornell (110 Fed., 816).

We do not consider the English act of 1906, which is quoted by the majority as a precedent for some of its proposals. There is no parallel whatever between the conditions at which the English act is aimed and the fundamental restrictions of the organic law of this country having no similitude in the constitution of the British Empire. The peculiar privileges conferred upon trades-unions by the English act of 1906 are accompanied by disabilities and criminal provisions of so drastic a nature that if they were offered as any part of the legislation of this country we should deem it our duty to oppose them in the interest of all workingmen.

We agree with the majority that "liberty and more of it is safe in the hands of the workingmen of the country." We are convinced of the merit and truth of that contention. We do not, however, believe that liberty is advanced in the person of any citizen by stripping him of remedial protection through processes which have received the deliberate and mature approval of the English-speaking race during all the centuries of its history. We can not believe that the due protection of person and property under constitutional guaranties and by remedies tested by time is "an impediment to progress," or that the destruction of the essential remedies by which person and property receive protection is "a great social advance." We believe with the President of the United States, in a famous statement made by him many years since to the American Bar Association, "It will not be surprising if the storm of abuse heaped upon the Federal courts and the political strength of Federal groups, whose plans of social reforms have met obstructions in these tribunals, shall lead to serious efforts, through legislation, to cut down their jurisdiction and cripple their efficiency. If this comes, then the responsibility for its effects, whether good or bad, must be not only with those who urge the change, but also with those who do not strive to resist its coming." (Address to American Bar Association at Detroit, 1895.)

JOHN A. STERLING.
R. O. MOON.
EDWIN W. HIGGINS.
PAUL HOWLAND.
FRANK M. NYE.
FRANCIS H. DODDS.

Mr. CLAYTON. Mr. Speaker, as I have only one more speech and have only nine and one-half minutes remaining, I am going to reserve that for my good friend from Arkansas [Mr. FLOYD] after the expiration of the time of the gentleman from Illinois [Mr. STERLING].

The SPEAKER pro tempore. The gentleman from Illinois has 47 minutes remaining.

Mr. STERLING. Mr. Speaker, I have listened with a great deal of interest to all that has been said on this bill. Gentlemen on that side of the House have devoted the entire time allotted to them to the discussion of that part of the bill which is contained in the substitute. Gentlemen should understand that the bill which is offered by the minority as a substitute is contained almost verbatim, with a single excepton, in the first paragraph of the bill that is offered by the majority. I submit to you, gentlemen, that every argument used on that side of the House has been in favor of that provision of the bill for which the minority stands and which they have presented to the House in the substitute bill. And they have made a splendid defense of that part of the bill. They have confined their time and their talk to a discussion of the bill about which there is no controversy. But in the beginning I want to take issue with the gentleman from Iowa [Mr. TOWNER], when he says that Republican Presidents have, in messages and in public utterances, indorsed the legislation proposed by the majority. In no message sent to Congress by any Republican President, and, so far as I know, in no public utterance, has any Republican President ever indorsed the provisions contained in the majority bill, excepting the provisions contained in the first section.

I agree wth the gentleman from Alabama [Mr. CLAYTON] and the gentleman from West Virginia [Mr. DAVIS] that the provision in this bill providing that no temporary restraining order shall be issued without notice, except in cases where delay would result in irreparable injury to property or property rights, is a wise provision and ought to be placed upon the statute books. There is no controversy with the gentlemen on that side of the House with reference to the question as to a short time for final hearing when injunctions have been issued. It is purely a Republican proposition.

As the gentleman from West Virginia [Mr. DAVIS] stated, I did introduce into this House four years ago a bill providing for those very things. President Roosevelt and President Taft in almost every message they have sent to Congress have urged upon Congress the wisdom of making clear and explicit the provisions of law relating to notice and to early trial, and that

is the proposition which we offer to this House in the substitute bill.

None of the gentlemen on that side of the House have undertaken to defend the last two paragraphs of this bill. No one, except the gentleman from Pennsylvania [Mr. WILSON] has even tried to justify that part of the bill. The gentleman from West Virginia [Mr. DAVIS] and the gentleman from Alabama [Mr. CLAYTON] said nothing in favor of those provisions of the bill, and which, I submit to you, in spite of what those gentlemen have said, constitute a radical change in the law of the land.

Mr. DAVIS of West Virginia. The gentleman refers to the fact that "the gentleman from West Virginia" said nothing in justification of the last section of the bill. The gentleman, of course, will be fair enough to admit that the gentleman's time expired just as he began to discuss that section?

Mr. STERLING. I think that is true, Mr. Speaker, but the gentleman had 30 minutes, and he devoted the 30 minutes to defending the provisions of the bill about which there is no controversy and on which everybody, so far as I know, agree. He did it extremely well, too. So well that I shall say but little in regard to the substitute bill, which is the same as that part of the majority bill which gentlemen have so ably supported by their argument. It seems to me if he had any defense to make of the provisions of the bill that are in controversy he would have devoted at least a part of his time to that defense.

Mr. DAVIS of West Virginia. Will the gentleman permit an interruption?

Mr. STERLING. Yes, sir.

Mr. DAVIS of West Virginia. I take for granted that the gentleman heard the speech made by his colleague, the gentleman from Pennsylvania [Mr. MOON].

Mr. STERLING. I did, every word of it.

Mr. DAVIS of West Virginia. Did he gather from that speech of his colleague, the gentleman from Pennsylvania [Mr. MOON] was not attacking the first three sections of the bill, and they were not controverted by him?

Mr. STERLING. I dislike to take any of my time to reply to that question, but the gentleman from Pennsylvania said one thing with reference to the first section of their bill, and that is the exception that I noted. The gentleman from Pennsylvania spoke of the fact that the provision of the bill offered by the majority provided the seven days should begin to run at the time the entry was made, and the gentleman from Pennsylvania insisted that the seven days should begin to run from the time service is had. That is the criticism he offered on that bill.

Now, it is well to know, gentlemen, what the law is in this country before we undertake to determine whether this bill changes it or whether it ought to be changed. And I propose to read from a decision of one of the courts of the United States what I believe to be a clear, explicit statement of the law and of all the law on this question that is involved in the last two paragraphs of this bill.

Mr. Speaker, I read from the case of the Union Pacific Railroad Co. *v.* Ruef. The decision is rendered by Judge McPherson in the district of Nebraska, and it is contained in volume 120 of the Federal Reporter. I read, beginning on page 113. I do not read it because it is the decision of Judge McPherson, but I read it because it is the law as it has been enunciated by the Federal judges almost universally, and he states it so clearly and in such excellent language, that I read from this decision rather than go through the numerous other decisions that cover the same point in substantially the same language. The judge says:

I believe, and that without a doubt, that, in so far as propositions are involved in this case, the law is as follows:

(1) The defendants acted within their right when they went out on a strike. Whether with good cause, or without any cause or reason, they had the right to quit work for the Union Pacific Railroad Co., and their reasons for quitting work were reasons they need not give to anyone. And that they all went out in a body, by agreement or preconcerted arrangement, does not militate against them or affect this case in any way.

(2) Such rights are reciprocal, and the company had the right to discharge any or all of the defendants, with or without cause, and it can not be inquired into as to what the cause was.

(3) It is immaterial whether the defendants are not now in the service of the company because of a strike or a lockout.

(4) The defendants have the right to combine and work together in whatsoever way they believe will increase their earnings, shorten their hours, lessen their labor, or better their condition, and it is for them, and them only, to say whether they will work by the day or by piecework. All such is part of their liberty. And they can so conclude as individuals, or as organizations, or as unions.

(5) And the right is also reciprocal. The railroad company has the right to have its work done by the premium or piece system, without molestation or interference by defendants or others. This is liberty for the company, and the company alone has the right to determine as to that matter.

(6) When the defendants went on a strike, or when put out on a lockout, their relations with the company were at an end; they were no longer employees of the company; and the places they once occupied in the shops were no longer their places, and never can be again, excepting by mutual agreement between the defendants and the company.

(7) No one of the defendants can be compelled by any law or by any order of any court to again work for the company on any terms or under any conditions.

(8) The company can not be compelled to employ again any of defendants or any other person, by any law or by any order of any court on any terms or under any conditions.

(9) Each, all, and every of the foregoing matters between the company and the defendants are precisely the same, whether applied to the company or to the defendants.

(10) The company has the right to employ others to take the places once filled by defendants; and in employing others the defendants are not to be consulted, and it is of no lawful concern to them, and they can make no lawful complaint by reason thereof. And it makes no difference whether such new employees are citizens of Omaha or of some other city or State. A citizen of Chicago, or from any State in the Union, has the same rights as to work in Omaha as has a citizen of Omaha.

(11) Defendants have the right to argue or discuss with the new employees the question whether the new employees should work for the company. They have the right to persuade them if they can. But in presenting the matter they have no right to use force or violence. They have no right to terrorize or intimidate the new employees. The new employees have the right to come and go as they please, without fear or molestation, and without being compelled to discuss this or any other question, and without being guarded or picketed; and persistent and continued and objectionable persuasion by numbers is of itself intimidating and not allowable.

(12) Picketing in proximity to the shops or elsewhere on the streets of the city, if, in fact, it annoys or intimidates the new employees, is not allowable. The streets are for public use, and the new employee has the same right, neither more nor less, to go back and forth, freely and without molestation and without being harassed by so-called arguments, and without being picketed, as has a defendant or other person. In short, the rights of all parties are one and the same.

Now, gentlemen, that is the law in the United States. Who would change it? Is there anyone who will say that that law does not extend to every man equal rights, equal privileges, and equal opportunities? It is based on that principle, fundamental to our American institutions, that all men are equal before the law. He who would change its provisions must justify by good and sufficient reasons if he hopes for the approval of the American people.

Some gentlemen on that side urge that this bill makes no changes in the law as now administered. Indeed, the majority report from the Committee on the Judiciary suggests that it makes no change in the existing law. Then why pass it? Why encumber the statutes with legislation that makes no change in the laws as they are now? It is not sufficient to say that some of the judges have misconstrued the law as laid down in the decision from which I read. Is there any assurance that judges will not misconstrue the law as you offer it in this bill? Here is a plain, explicit provision of the law, which admits of no possibility of a doubtful construction. Courts will differ in their opinion as to the meaning of this bill. Gentlemen on the floor of this House honestly disagree as to its meaning and effect, and there will be judges who honestly construe it one way and other judges who will honestly construe it another way, and we will then have a diversity of judicial construction of the law which is now plain and explicit.

I say this bill does change the law. It takes away from both the employer and the employee the right of protection by injunction which they now enjoy.

In order to get it into the RECORD, I desire to read a paragraph from the Republican platform on this question, as follows:

We believe, however, that the rules of procedure in the Federal courts with respect to the issuance of the writ of injunction should be more accurately defined by statute, and that no injunction or temporary restraining order should be issued without notice, except where irreparable injury would result from delay, in which case a speedy hearing should be granted thereafter.

The substitute which we have offered is in strict harmony with that provision of the Republican platform. It is in strict harmony with the platform on which every Republican was elected two years ago. It is the fulfillment of the pledge we then made to the country. It is in strict accord with the letter of acceptance of President Taft and with every suggestion made by Mr. Roosevelt when he was President of the United States on this subject of injunctions. No man on the floor of this House can say that either of those gentlemen ever at any time made utterances in favor of legislation such as is provided in this bill.

In order to settle that question, Mr. Speaker, I desire to read from a letter written by Mr. Roosevelt when he was President to Secretary Knox. It is dated October 21, 1908. It was during the last presidential campaign.

Mr. CLAYTON. Mr. Speaker, may I ask the gentleman a question right in that connection?

Mr. STERLING. Yes.

Mr. CLAYTON. The letter which the gentleman is about to read is a letter that former President Roosevelt wrote in reference to what was known as the Pearre bill, is it not?

Mr. STERLING. Yes.

Mr. CLAYTON. And that is not the bill which is now under consideration.

Mr. STERLING. Let us see about that.

Mr. CLAYTON. This is an entirely different proposition.

Mr. STERLING. We will discuss that proposition too. What was known as the Pearre bill was at that time pending before the Judiciary Committee. It had been before the committee for two or three sessions, and I think has been before the committee ever since either under the name of the Pearre bill or the Wilson bill. After Mr. Pearre retired from Congress the bill came before the Judiciary Committee again, having been introduced by the gentleman from Pennsylvania [Mr. WILSON].

Now, the majority of the committee had started in to revise the Wilson bill, and the Wilson bill is in substance the same as the old Pearre bill. The Pearre bill provided for three things, and three things only that are material to this discussion. First, it related only to labor disputes; second, it provided that no court should hold that the right to do business in a certain place or in a certain way was a property right to be protected by injunction; third, it abrogated the offense of conspiracy. Now, that is what the Pearre bill provided and it is what the Wilson bill provides, and it is what this bill provides. The only improvement in this bill over the Pearre bill is that paragraph which contains the provisions covered by the bill which I have offered as a substitute.

Mr. DAVIS of West Virginia. The gentleman has said that not in any message of either President Taft or President Roosevelt was there any expression which justifies the course pursued in this bill. I take it the gentleman is familiar with the message of President Roosevelt of January 21, 1908.

Mr. STERLING. I have read it, but I do not want the gentleman to read it now in my time.

Mr. DAVIS of West Virginia. I wanted to ask whether the gentleman would give me time to read it.

Mr. STERLING. No; I will not give the gentleman time to read it now. The gentleman has called the attention of the House to it, and Members can read it for themselves. I propose to give to the House Mr. Roosevelt's views on the Pearre bill in his letter to Secretary Knox, which I mentioned a moment ago. Before reading it I want to say this: It is true that the bill which is now before the House does not expressly provide that no court shall hold that the right to do business is a property right, but it does provide a method—a legalized method—whereby that right may be destroyed, whether you call it a property right or whether you call it a personal right. And so I say, so far as the effect of this bill is concerned, it is on all fours with the old Pearre bill, that Mr. Roosevelt referred to in this letter and which he severely condemns.

Mr. MARTIN of South Dakota. Will the gentleman be definite and state what part of the bill he conceives does make that provision?

Mr. STERLING. Yes; I will later on. This is a very long letter, and I shall read only three paragraphs:

> There is no need of generalities or of vague expressions of sympathy for labor. Let Mr. Bryan simply confine himself to the anti-injunction plank of his own platform and tell us publicly, definitely, and clearly whether he accepts or rejects the statement of Mr. Gompers that this plank pledges him to the principles of the bill for which Mr. Gompers stands, and whether, if elected, he will endeavor to have this proposition enacted into law.

The bill that Mr. Roosevelt refers to is the Pearre bill; and I assert here again, and make it as emphatic as I can, that this bill contains practically every bad feature that the old Pearre bill contained.

How can you gentlemen suggest that President Taft and Mr. Roosevelt had indorsed legislation of this kind? In this letter Mr. Roosevelt calls on Mr. Bryan to say to the people of the country whether or not he will stand for the proposition that is contained in the old Pearre bill, and, so far as I know, your candidate for President, Mr. Bryan, never said that he would stand for the propositions therein contained.

He goes on:

> This is asked honestly in the interest of that large voting public which believes sincerely in the promotion of every legitimate right and interest of labor; but which believes also that from the standpoint of the best interest of labor it neither requires nor is entitled to more than justice, and that the right to destroy business should not be formally recognized in the law of the land.
>
> REALIZES RIGHT TO SPEAK.
>
> I feel that I have the right to speak frankly in this matter, because throughout my term as President it has been my constant object to do everything in my power, both by administrative action and by endeavoring to secure legislative action, to advance the cause of labor, protect it from unjust aggression, and secure to it its legitimate rights. I have accomplished something; I hope to accomplish more before I leave office; and I have taken special and peculiar interest in Mr. Taft's candidacy because I believe that of all the men in this country he is the man best qualified for continuing the work of securing to the wage-workers of the country their full rights.
>
> I will do everything in my power for the wage workers of the country except to do what is wrong. I will do wrong for no man; and with all the force in my power I solemnly warn the laboring man of this country that any public man who advocates doing wrong in their interests can not be trusted by them, and this whether his promise to do wrong is given knowing that it is wrong or because of a levity and lack of consideration which make him willing to promise anything without counting the cost if thereby support at the moment is to be purchased.
>
> WILL FIGHT ABUSES.
>
> Just as I have fought hard to bring about in the fullest way the recognition of the right of the employee to be amply compensated for injury received in the course of his duty, so I have fought hard and shall continue to fight hard to do away with all abuses in the use of the power of injunction. I will do everything I can to see that the power of injunction is not used to oppress laboring men. I will endeavor to secure them full and equal justice. Therefore, in the interest of all good citizens, be they laboring men, business men, professional men, farmers, or members of any other occupation, so long as they have in their souls the principles of sound American citizenship, I denounce as wicked the proposition to secure a law which, according to the explicit statement of Mr. Gompers, is to prevent the courts from effectively interfering with riotous violence when the object is to destroy a business, and which will legalize a blacklist and the secondary boycott, both of them the apt instruments of unmanly persecution.

Those are the views of Mr. Roosevelt on the legislation which you propose, and if gentlemen can get comfort from them they are welcome to it.

Now, this bill provides that peaceful picketing shall be allowed. Peaceful picketing is now allowed. The law which I read from the decision of Judge McPherson, reiterated by the courts of this country over and over again, holds that peaceful picketing is lawful.

Mr. CLAYTON. Mr. Speaker, if it will not interrupt the gentleman I would like to ask him a question.

Mr. STERLING. I will yield.

Mr. CLAYTON. I observe that the gentleman has read what former President Roosevelt said in behalf of President Taft. Does the gentleman know whether former President Roosevelt still entertains that opinion?

Mr. STERLING. Oh, the gentleman can decide that question for himself. The gentleman can not divert me from the proposition now before the House by such a question.

Mr. CLAYTON. One more question.

Mr. STERLING. I will have to ask the gentleman to desist now.

Mr. CLAYTON. I do not wish to embarrass the gentleman.

Mr. STERLING. The gentleman will not embarrass me, but he is taking up my time.

Mr. CLAYTON. Oh, if the gentleman does not wish to yield.

Mr. STERLING. I will yield to the gentleman for one more question.

Mr. CLAYTON. I would like to know whether ex-President Roosevelt has changed his views in regard to the labor legislation or the labor question. He has changed his views in regard to President Taft.

Mr. STERLING. Mr. Speaker, I submit that the gentleman from Alabama is consuming my time unnecessarily.

The SPEAKER pro tempore (Mr. MARTIN of Colorado). The gentleman from Illinois has the floor.

Mr. STERLING. Mr. Speaker, this bill, while it in terms permits peaceful picketing, which is already the law, also in terms admits of another kind of picketing, which is unlawful. I hope no man in this House, on that side or on this, will get the idea, whether he be, as some claim they are, special representatives of organized labor or not—I hope they will not get the idea that this bill is aimed only at the employer of labor in this country. It strikes just as fiercely and just as hard at the rights of the laboring men. This bill provides that one or any number of men can go to the home, to the very fireside of another, with or without his consent, for the purpose, as they call it, of conducting a peaceful picket. I say to you that that will do away with the protection that a large majority of the laboring men of the United States now have under the law of injunctions. It is just as much a violation of the rights of the men that labor as it is of the men that employ labor. This bill provides that any number of persons, who happen to disagree with another who desires to work, may go to his home or to the place where he works at the counter or in the shop or anywhere he happens to be, whether he consents or not, to prevail on him to cease work, and that act on the part of these fellow workmen can not be enjoined under this bill for the protection of the rights of the man that seeks to labor, the man that wants to labor. It deprives him of the protection of that right as well as the right of the protection of the men that employ labor in this country.

Another thing, gentlemen——

Mr. BUCHANAN. Will the gentleman yield?

Mr. STERLING. Yes; for a question.

Mr. BUCHANAN. Does not the present law and the police officials as a general thing in this country protect the rights of the laboring man when he wants to work?

Mr. STERLING. Yes, of course it does; but gentlemen who vote for this bill are voting to take away his right to this protection.

Mr. BUCHANAN. Oh, no.

Mr. STERLING. The man who wants to work has the right to do so under the law. I have read it to you, and it will not be disputed. He has the right to engage his labor on any such terms as he and the employer can agree upon. He has the right to go and come to and from his place of business. He has a right to be let alone if he so desires, the right to enjoy his hours of rest, a right to the peace and quiet of his own fireside under the law as it now is. But under this law he is deprived of the protection to these rights which the law now gives him.

Mr. BUCHANAN. Will the gentleman yield?

Mr. STERLING. No; I can not yield to the gentleman any more.

Mr. BUCHANAN. For just a question?

Mr. STERLING. I can not. How much time have I remaining, Mr. Speaker?

The SPEAKER. The gentleman has 11 minutes.

Mr. WILSON of Pennsylvania. Will the gentleman yield?

Mr. STERLING. If I have the time.

Mr. WILSON of Pennsylvania. I would like the gentleman to point out the particular part of this bill that permits any man to enter another man's home.

Mr. STERLING. Right here is is. I will read it to you now, and settle the question:

> And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be—

"Anywhere he happens to be," so says the bill. It makes no difference; he may be at his home, he may be at church, he may be at the counter, or at the anvil, or on his engine; he may be anywhere; yet under this bill others, one or many, may seek him out, whether he so wills or not, to persuade him to work or to abstain from working. That does not comport with my idea of liberty. It means liberty to no one. It means license to one man to interfere with the liberty of another. It is not equal protection under the law, and no part of American citizenship will resent it quicker than the laboring men of the country.

Gentlemen, you are deceiving nobody but yourselves on this proposition. I submit to you that the great rank and file of the laboring men of the United States are not demanding class legislation. Do not take the words of a man here and there who pretends to speak for labor. I say to you gentlemen on this side of the House and on that, whether you claim to be special representatives of labor or not, you are not any better representatives of labor than I am. [Applause.] Not a bit of it. I have in my heart the same sympathy for the laboring man that you have, and I say to you that the great rank and file of the American laboring people are not demanding class legislation.

Aye, Mr. Speaker, the very bulwark against class legislation in this country has been the workingmen. The men who toil, in the shop, everywhere, on the farms, on the railroads, in the mines, the workingmen everywhere have stood as the bulwark of safety in the United States against class legislation. Go to the man at the anvil, to the man on the engine, to the man in the mine, and at the plow; go to the man who toils, wherever you find him, and ask him if he is in favor of class legislation. He still believes in the principles of liberty and equality, and through him those principles will endure. He is wise enough to know and he does know that his safety, happiness, and prosperity rests on the Constitution, which secures to all men equal protection of the law.

This is class legislation. Argue, if you please, that Congress has the right to pass class legislation, but do you favor it even if it is constitutional? The Constitution provides that every State shall secure to all persons equal protection under the law. Shall Congress do less than is required of the States to preserve inviolate the principle that all men are equal before the law?

Mr. HUGHES of New Jersey. Mr. Speaker——

Mr. STERLING. I submit, Mr. Speaker, this bill strikes at the very foundation, at the very fundamental principle on which our free institutions are based. It strikes at the very principle on which American institutions rest. Aye, if the Constitution does not say it, the Declaration of Independence says that all men are equal under the law. Should you now abrogate that principle by passing legislation that applies only to a part of our American citizens?

The last sentence of this bill abrogates the offense of conspiracy. Conspiracy is a combination or agreement of two or more, the intent of which is to do another an injury. The bill provides that such offense can not be committed in a labor dispute. Do gentlemen pretend to say that American laboring men are asking for legislation of that kind? His will be the first hand lifted against such a proposition. In conclusion, I repeat this bill has all the objections that were contained in the bill to which President Roosevelt referred when he wrote the letter to Secretary Knox. Mr. Bryan, although called on in that letter to state his position, publicly never did, to my knowledge, defend the proposition that was contained in the Pearre bill. Gentlemen, you should read this bill before you vote for it. I know that there are men on that side who would never have voted for the Pearre bill. You will find this bill contains the same ideas and seeks the same end as that bill. If you do, some of you gentlemen will join with us in adopting this substitute bill, which should be the law of the land. [Loud applause.]

Mr. CLAYTON. I yield whatever time there is remaining to me to the gentleman from Arkansas [Mr. FLOYD]. I have 9½ minutes, I understand.

Mr. STERLING. Mr. Speaker, how much time had I left?

The SPEAKER. The gentleman from Illinois has five minutes remaining.

Mr. STERLING. I desire to yield half a minute to the gentleman from Illinois [Mr. MCKENZIE].

Mr. CLAYTON. Very well, Mr. Speaker; I withhold my yielding to the gentleman from Arkansas.

Mr. MCKENZIE. Mr. Speaker, I simply wish to ask unanimous consent to extend my remarks in the RECORD.

Mr. CLAYTON. I wish to say, in all fairness to the gentleman from Illinois, I understood him to say that he had but one speech to make a while ago and insisted that I parcel out my time, which I did, he assuring me that he would have but one speech. After he has concluded that one speech, according to his previous statement, he now says he wants to yield five minutes to another gentleman.

Mr. STERLING. The gentleman from Illinois [Mr. MCKENZIE], I think, wanted to say a word and extend his remarks in the RECORD.

Mr. CLAYTON. He has that under general leave. With the statement that it is only half a minute, I make no objection.

The SPEAKER. The gentleman from Illinois [Mr. MCKENZIE] is recognized for half a minute.

[Mr. MCKENZIE addressed the House. See Appendix.]

Mr. CLAYTON. Mr. Speaker, I yield now to the gentleman from Arkansas the 9½ minutes I have remaining.

The SPEAKER. The gentleman from Arkansas is recognized for 9½ minutes.

Mr. FLOYD of Arkansas. Mr. Speaker, I wish in the limited time I have to confine my remarks to this bill. It has been assailed on various grounds. It has been assailed as unconstitutional and revolutionary. It has been assailed by the gentleman from Illinois [Mr. STERLING] as being contrary to the interests of labor. Now, let us see. Take the first section of the bill. The legislation proposed therein was recommended by the President; it was drafted by the gentleman from Pennsylvania [Mr. MOON]. It was indorsed by the gentleman from Illinois [Mr. STERLING], and he now proposes to offer as a substitute for this entire bill the Moon bill, H. R. 21486, which is substantially incorporated as the first section of this bill. Wherein is that unconstitutional? Wherein is that revolutionary? Wherein is that wrong?

The second section of the bill provides that hereafter when injunctions are issued that the plaintiff in the action shall be required to give security. The law now permits the court in its discretion to require security. Wherein is that revolutionary? Wherein is that unconstitutional? Wherein is that wrong?

The third section of the bill embodies two propositions. It reads as follows:

> SEC. 266b. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained; and shall be binding only upon the parties to the suit, their agents, servants, employees, and attorneys, or those in active concert with them, and who shall by personal service or otherwise have received actual notice of the same.

To the first part I have heard no objection urged. Against the second part gentlemen seriously protest. In reference to the issuance of injunctions in the latter portion of the section these words occur:

> Shall be binding only upon the parties to the suit, their agents, servants, employees, and attorneys, or those in active concert with them, and who shall, by personal service or otherwise, have received actual notice of the same.

This provision forbids the blanket injunction.

That is objected to, and seriously objected to, by gentlemen on the other side. For what reason? Some say that it interferes with the judicial powers of the court. Others say that the courts do not enforce that provision anyway. What is the effect of the court issuing those blanket injunctions if they do not enforce their decrees against parties without actual notice? I will tell you the effect of it. It is the exercise by the courts, at the instance of the plaintiff or employers, of a kind of judicial intimidation over communities. [Applause on the Democratic side.] What valid objection to saying in the law that the court shall exercise no such power as that assumed and implied in the issuance of a blanket injunction? Now, as to the last proposition:

SEC. 266c. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means so to do; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto.

It has been intimated that no one stood here and dared defend the last section of this bill. I defend it. I propose in the time at my command to devote the remainder of my remarks to the last section of the bill. And I will ask if you are opposed to the provisions of the bill as written, how many of you would favor the converse of the proposition? Suppose, instead of presenting the bill as it is written here, we change the language so as to read that hereafter in issuing injunctions the court shall have the power to prohibit any persons from terminating any relation of employment. How many of you will stand for that?—

or from ceasing to perform any work or labor—

How many of you would stand for that?—

or from recommending, advising, or persuading others by peaceful means to do so—

How many of you would stand for that?—

or from attending at or near a house or place where a person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working—

How many of you would stand for that?—

or from ceasing to patronize or to employ any party to such dispute—

How many of you would stand for that?—

or from recommending, advising, or persuading others by peaceful means so to do—

How many of you would stand for that?—

or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value—

How many of you would stand for that?—

or from peaceably assembling at any place in a lawful manner or for lawful purposes.

How many of you would stand for that?—

or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto.

How many of you would stand for the converse of the several propositions embodied in this section of the bill? Not one, and you know it. But the gentleman from Illinois [Mr. STERLING] in his last appeal makes an argument that no one has previously presented, and that is, that this bill is against the interests of labor, and he thereupon appeals to the friends of labor to defeat it.

My God, is it not strange that at the prolonged hearings had before the Judiciary Committee the representatives of capital appeared before the committee, opposing the legislation, and yet no representative of labor was there contending that it was against his interest, against the interests of labor?

Oh, the gentleman says it repeals the law of conspiracy. He says it authorizes an invasion of the home. As to that section, what interpretation, what construction can be put upon any language therein that would justify his assertion that it allows anybody to enter the home of any other person? No; the gentleman is in hard straits for arguments when he presents such suggestions as he does in opposition to this bill.

But he says that it repeals the law of conspiracy. This bill has nothing to do with the law of conspiracy. Conspiracy under the law is a crime. This bill proposes to repeal no criminal statute. All the criminal statutes stand on the books as they were written, and will so stand when this bill is adopted.

What does it do? It provides that the courts shall not by the injunctive process interfere with persons doing any act or thing which might lawfully be done in the absence of such a dispute by anybody who is a party thereto. You talk of class legislation. This provision simply provides that the courts shall not interfere by injunctions in preventing any persons who are parties to a labor dispute from doing what they may be permitted lawfully to do in the absence of a labor dispute, and you insist by implication upon leaving the law in such a condition that you will have one rule for the laboring man and another rule for other people. [Applause.] It is to that injustice that labor objects. It is to remedy that situation that labor has insisted for years on legislation against the abuse of the arbitrary injunctive process and of unwarranted injunctions by the Federal courts. [Applause.]

No, Mr. Speaker, this bill does not violate any provision of the Constitution. This bill is devoted entirely to questions relating to judicial procedure in injunction cases. Its object and purpose is not to confer upon employees or laborers any special privileges or any privileges not accorded to other citizens under like circumstances. It is a measure intended to secure justice to labor in its disputes with capital.

The opponents of this class of legislation express great and almost reverential respect for the courts. As a lawyer I have the highest respect for the courts, but I can not share in the opinion so often expressed of late to the effect that any attempt on the part of citizens, labor organizations, or Congress itself to secure judicial reforms is a reflection upon the courts. With the exception of a few short provisions in the Constitution defining judicial power and providing for the Supreme Court and such inferior courts as Congress may, from time to time, create and establish, our entire judicial system, together with all rules of procedure obtaining in our courts, are the work of Congress and the result of judicial interpretation. In the absence of congressional action, subject to the limitations of the Constitution, the courts have adopted certain rules and procedure of their own. In those court-made rules of procedure lies the greatest danger of judicial usurpation and abuse. It is as clearly within the power of Congress to correct an abuse growing out of rules and precedents of the courts as it is to repeal a statute of its own creation.

It is the contention of the advocates of this proposed legislation that such abuses have grown up under our system and now exist, and it is to correct such evils and in the interest of simple justice that this legislation is demanded. The gentleman from Pennsylvania [Mr. MOON] asserted that "Equity is to protect great industry and great interests." I deny that such is the proper function and province of equity courts. Equity courts were established in order that right and justice might be done in cases where there was no adequate remedy at law. It was never intended to be used as an instrument of injustice or oppression to any person or to any class. The friends of labor demand the passage of this bill in order that hereafter unwarranted and improvident injunctions shall not, at the behest of capital, be issued against labor; simply this and nothing more.

The SPEAKER. The time of the gentleman has expired. All time has expired. The question is on agreeing to the substitute offered by the gentleman from Illinois [Mr. STERLING].

The question was taken, and the Speaker announced that the "noes" seemed to have it.

Mr. STERLING. Mr. Speaker, I demand the yeas and nays.

The SPEAKER. The yeas and nays are demanded. The Chair will count. Those in favor of taking a vote by the yeas and nays will rise and stand until they are counted. [After counting.] Fifty-two gentlemen have arisen in the affirmative. Those opposed will rise and stand until they are counted. [After counting.] One hundred and fifteen gentlemen have arisen in the negative—a sufficient number. The yeas and nays are ordered, and the Clerk will call the roll. Those in favor of the substitute will, when their names are called, answer "yea," and those opposed will answer "nay."

Mr. FULLER rose.

The SPEAKER. For what purpose does the gentleman rise?

Mr. FULLER. Can we not have the substitute bill reported?

The SPEAKER. Without objection, the substitute bill will be reported.

Mr. BLACKMON. Mr. Speaker, I object.

The SPEAKER. Objection is made. The Clerk will call the roll.

The question was taken; and there were—yeas 48, nays 220, answered "present" 6, not voting 118, as follows:

YEAS—48.

Ames	Driscoll, M. E.	Humphrey, Wash.	Moon, Pa.
Anthony	Fairchild	Lafean	Moore, Pa.
Barchfeld	Fordney	Lawrence	Nye
Butler	Foss	McCreary	Payne
Calder	Gardner, N. J.	McKenzie	Roberts, Mass.
Cannon	Griest	McKinney	Sloan
Catlin	Harris	McLaughlin	Stephens, Cal.
Crago	Heald	Madden	Sterling
Currier	Henry, Conn.	Malby	Stevens, Minn.
Dalzell	Higgins	Mann	Vare
De Forest	Hill	Martin, S. Dak.	Volstead
Dodds	Howell	Mondell	Young, Mich.

NAYS—220.

Adair	Dyer	Hull	Pray
Adamson	Edwards	Jackson	Pujo
Aiken, S. C.	Esch	Jacoway	Rainey
Ainey	Estopinal	Johnson, Ky.	Raker
Akin, N. Y.	Evans	Jones	Ransdell, La.
Alexander	Faison	Kendall	Rauch
Allen	Farr	Kennedy	Rees
Anderson, Minn.	Fergusson	Kent	Roberts, Nev.
Anderson, Ohio	Ferris	Kinkaid, Nebr.	Roddenbery
Ansberry	Finley	Kinkead, N. J.	Rothermel
Ashbrook	Fitzgerald	Kitchin	Rouse
Austin	Flood, Va.	Knowland	Rubey
Barnhart	Floyd, Ark.	Konop	Rucker, Colo.
Bartlett	Focht	Kopp	Rucker, Mo.
Bathrick	Foster	Korbly	Russell
Bell, Ga.	Fowler	Lafferty	Sharp
Blackmon	Francis	La Follette	Sherley
Boehne	French	Langley	Sherwood
Booher	Fuller	Lee, Ga.	Sims
Borland	Gallagher	Lee, Pa.	Slayden
Bowman	Garner	Lenroot	Slemp
Broussard	Garrett	Lever	Small
Buchanan	George	Lewis	Smith, J. M. C.
Bulkley	Glass	Lindbergh	Smith, Saml. W.
Burke, Wis.	Good	Linthicum	Smith, N. Y.
Byrnes, S. C.	Goodwin, Ark.	Lloyd	Smith, Tex.
Byrns, Tenn.	Gould	Lobeck	Stedman
Callaway	Graham	McCoy	Stephens, Miss.
Candler	Gray	McDermott	Stephens, Nebr.
Cantrill	Green, Iowa	McGuire, Okla.	Stephens, Tex.
Carlin	Greene, Mass.	Macon	Stone
Carter	Gregg, Pa.	Maguire, Nebr.	Sulzer
Cary	Gregg, Tex.	Martin, Colo.	Sweet
Clayton	Hamill	Matthews	Talcott, N. Y.
Cline	Hamilton, Mich.	Miller	Taylor, Colo.
Collier	Hamilton, W. Va.	Moon, Tenn.	Thayer
Connell	Hamlin	Moore, Tex.	Thomas
Conry	Hammond	Morgan	Towner
Cooper	Hardy	Morrison	Townsend
Copley	Harrison, Miss.	Morse, Wis.	Tribble
Covington	Harrison, N. Y.	Moss, Ind.	Turnbull
Crumpacker	Hartman	Murray	Tuttle
Cullop	Haugen	Needham	Underhill
Curry	Hay	Neeley	Underwood
Daugherty	Hayden	Nelson	Warburton
Davis, Minn.	Hayes	Norris	Watkins
Davis, W. Va.	Helgesen	Oldfield	Webb
Denver	Henry, Tex.	O'Shaunessy	Wedemeyer
Dickinson	Hensley	Padgett	Wickliffe
Difenderfer	Hobson	Page	Willis
Dixon, Ind.	Holland	Patton, Pa.	Wilson, Ill.
Doremus	Houston	Peters	Wilson, Pa.
Doughton	Howard	Post	Witherspoon
Driscoll, D. A.	Hughes, Ga.	Pou	Young, Kans.
Dupré	Hughes, N. J.	Powers	Young, Tex.

ANSWERED "PRESENT"—6.

Beall, Tex.	Davenport	Gillett	Tilson
Browning	Dwight		

NOT VOTING—118.

Andrus	Gardner, Mass.	McCall	Scully
Ayres	Godwin, N. C.	McGillicuddy	Sells
Bartholdt	Goeke	McHenry	Shackleford
Bates	Goldfogle	McKellar	Sheppard
Berger	Gudger	McKinley	Simmons
Bradley	Guernsey	McMorran	Sisson
Brantley	Hanna	Maher	Smith, Cal.
Brown	Hardwick	Mays	Sparkman
Burgess	Hawley	Mott	Speer
Burke, Pa.	Heflin	Murdock	Stack
Burke, S. Dak.	Helm	Olmsted	Stanley
Burleson	Hinds	Palmer	Steenerson
Burnett	Howland	Parran	Sulloway
Campbell	Hubbard	Patten, N. Y.	Switzer
Clark, Fla.	Hughes, W. Va.	Pepper	Taggart
Claypool	Humphreys, Miss.	Pickett	Talbott, Md.
Cox, Ind.	James	Plumley	Taylor, Ala.
Cox, Ohio	Johnson, S. C.	Porter	Taylor, Ohio
Cravens	Kahn	Prince	Thistlewood
Curley	Kindred	Prouty	Utter
Danforth	Konig	Randell, Tex.	Vreeland
Davidson	Lamb	Redfield	Weeks
Dent	Langham	Reilly	Whitacre
Dickson, Miss.	Legare	Reyburn	White
Dies	Levy	Richardson	Wilder
Donohoe	Lindsay	Riordan	Wilson, N. Y.
Draper	Littlepage	Robinson	Wood, N. J.
Ellerbe	Littleton	Rodenberg	Woods, Iowa
Fields	Longworth	Sabath	
Fornes	Loud	Saunders	

So the substitute was lost.

The following additional pairs were announced:

Until further notice:

Mr. AYRES with Mr. HOWLAND.

Mr. DICKSON of Mississippi with Mr. PLUMLEY.

Mr. WHITE with Mr. WOODS of Iowa.

Mr. STANLEY with Mr. VREELAND.

Mr. SAUNDERS with Mr. UTTER.

Mr. RICHARDSON with Mr. STEENERSON.

Mr. MCKELLAR with Mr. SMITH of California.

Mr. MCGILLICUDDY with Mr. LANGHAM.

Mr. HEFLIN with Mr. PRINCE.

Mr. FIELDS with Mr. PICKETT.

Mr. DIES with Mr. REYBURN.

Mr. COX of Indiana with Mr. MCKINLEY.

Mr. CLAYPOOL with Mr. LOUD.

Mr. BURLESON with Mr. HANNA.

Mr. BRANTLEY with Mr. BARTHOLDT.

Mr. TALBOTT of Maryland with Mr. PARRAN.

Mr. PEPPER with Mr. WILDER.

Mr. SABATH with Mr. MCMORRAN.

Mr. REILLY with Mr. LONGWORTH.

For the balance of the day:

Mr. REDFIELD with Mr. KAHN.

Mr. DENT with Mr. WOOD of New Jersey.

Mr. HUMPHREYS of Mississippi with Mr. OLMSTED.

Mr. SCULLY (for the Clayton bill against the substitute) with Mr. BROWNING (against the Clayton bill and for the substitute).

The result of the vote was then announced, as above recorded.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

Mr. CLAYTON, Mr. MANN, and Mr. HENRY of Texas demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 243, nays 31, answered "present" 6, not voting 113, as follows:

YEAS—243.

Adair	Edwards	Johnson, Ky.	Ransdell, La.
Adamson	Ellerbe	Jones	Rauch
Aiken, S. C.	Esch	Kendall	Rees
Ainey	Estopinal	Kennedy	Reilly
Akin, N. Y.	Evans	Kent	Roberts, Mass.
Alexander	Faison	Kinkaid, Nebr.	Roberts, Nev.
Allen	Farr	Kinkead, N. J.	Roddenbery
Ames	Fergusson	Kitchin	Rothermel
Anderson, Minn.	Ferris	Knowland	Rouse
Anderson, Ohio	Finley	Konop	Rubey
Ansberry	Fitzgerald	Kopp	Rucker, Colo.
Anthony	Flood, Va.	Korbly	Rucker, Mo.
Ashbrook	Floyd, Ark.	Lafferty	Russell
Austin	Focht	La Follette	Sharp
Barchfeld	Foster	Langley	Sherley
Barnhart	Fowler	Lee, Ga.	Sherwood
Bartlett	Francis	Lee, Pa.	Sims
Bathrick	French	Lenroot	Slayden
Bell, Ga.	Fuller	Lever	Slemp
Blackmon	Gallagher	Lewis	Sloan
Boehne	Garner	Lindbergh	Small
Booher	Garrett	Linthicum	Smith, J. M. C.
Borland	George	Lloyd	Smith, Saml. W.
Bowman	Glass	Lobeck	Smith, N. Y.
Broussard	Good	McCoy	Smith, Tex.
Buchanan	Goodwin, Ark.	McDermott	Stack
Bulkley	Gould	McGuire, Okla.	Stedman
Burke, Wis.	Graham	McLaughlin	Stephens, Miss.
Byrnes, S. C.	Gray	Macon	Stephens, Nebr.
Byrns, Tenn.	Green, Iowa	Maguire, Nebr.	Stephens, Tex.
Callaway	Greene, Mass.	Martin, Colo.	Stevens, Minn.
Candler	Gregg, Pa.	Martin, S. Dak.	Stone
Cantrill	Gregg, Tex.	Matthews	Sulzer
Carlin	Griest	Miller	Sweet
Carter	Hamill	Mondell	Talcott, N. Y.
Cary	Hamilton, Mich.	Moon, Tenn.	Taylor, Colo.
Clayton	Hamilton, W. Va.	Moore, Tex.	Thayer
Cline	Hamlin	Morgan	Thomas
Collier	Hammond	Morrison	Towner
Connell	Hardy	Morse, Wis.	Townsend
Conry	Harrison, Miss.	Moss, Ind.	Tribble
Cooper	Harrison, N. Y.	Murray	Turnbull
Copley	Hartman	Needham	Tuttle
Covington	Haugen	Neeley	Underhill
Crago	Hay	Nelson	Underwood
Crumpacker	Hayden	Norris	Vare
Cullop	Hayes	Oldfield	Volstead
Curry	Heald	O'Shaunessy	Warburton
Daugherty	Helgesen	Padgett	Watkins
Davis, Minn.	Henry, Tex.	Page	Webb
Davis, W. Va.	Hensley	Patton, Pa.	Wedemeyer
De Forest	Hobson	Peters	White
Denver	Holland	Post	Wickliffe
Dickinson	Houston	Pou	Willis
Difenderfer	Howard	Powers	Wilson, Ill.
Dixon, Ind.	Howell	Pray	Wilson, Pa.
Doremus	Hughes, Ga.	Prince	Witherspoon
Doughton	Hughes, N. J.	Prouty	Young, Kans.
Driscoll, D. A.	Hull	Pujo	Young, Tex.
Dupré	Jackson	Rainey	The Speaker
Dyer	Jacoway	Raker	

NAYS—31.

Butler	Catlin	Driscoll, M. E.	Gardner, N. J.
Calder	Dalzell	Fairchild	Harris
Cannon	Dodds	Fordney	Henry, Conn.

Higgins	McCreary	Malby	Payne
Hill	McKenzie	Mann	Stephens, Cal.
Humphrey, Wash.	McKinley	Moon, Pa.	Sterling
Lafean	McKinney	Moore, Pa.	Young, Mich.
Lawrence	Madden	Nye	

ANSWERED "PRESENT"—6.

Beall, Tex.	Davenport	Gillett	Sparkman
Browning	Dwight		

NOT VOTING—113.

Andrus	Fornes	Littleton	Scully
Ayres	Foss	Longworth	Sells
Bartholdt	Gardner, Mass.	Loud	Shackleford
Bates	Godwin, N. C.	McCall	Sheppard
Berger	Goeke	McGillicuddy	Simmons
Bradley	Goldfogle	McHenry	Sisson
Brantley	Gudger	McKellar	Smith, Cal.
Brown	Guernsey	McMorran	Speer
Burgess	Hanna	Maher	Stanley
Burke, Pa.	Hardwick	Mays	Steenerson
Burke, S. Dak.	Hawley	Mott	Sulloway
Burleson	Heflin	Murdock	Switzer
Burnett	Helm	Olmsted	Taggart
Campbell	Hinds	Palmer	Talbott, Md.
Clark, Fla.	Howland	Parran	Taylor, Ala.
Claypool	Hubbard	Patten, N. Y.	Taylor, Ohio
Cox, Ind.	Hughes, W. Va.	Pepper	Thistlewood
Cox, Ohio	Humphreys, Miss.	Pickett	Tilson
Cravens	James	Plumley	Utter
Curley	Johnson, S. C.	Porter	Vreeland
Currier	Kahn	Randell, Tex.	Weeks
Danforth	Kindred	Redfield	Whitacre
Davidson	Konig	Reyburn	Wilder
Dent	Lamb	Richardson	Wilson, N. Y.
Dickson, Miss.	Langham	Riordan	Wood, N. J.
Dies	Legare	Robinson	Woods, Iowa
Donohoe	Levy	Rodenberg	
Draper	Lindsay	Sabath	
Fields	Littlepage	Saunders	

So the bill was passed.

The Clerk announced the following additional pairs:

On this vote:

Mr. SCULLY (in favor of bill) with Mr. BROWNING (against).

Until further notice:

Mr. Cox of Indiana with Mr. LONGWORTH.

Mr. DONOHOE with Mr. WOODS of Iowa.

Mr. LAMB with Mr. CURRIER.

Mr. BROWN with Mr. FOSS.

Mr. HEFLIN with Mr. VREELAND.

Mr. DAVENPORT. Mr. Speaker, I desire to inquire whether or not the gentleman from South Dakota, Mr. BURKE, voted?

The SPEAKER. The gentleman did not.

Mr. DAVENPORT. I have a general pair with him, and I desire to withdraw my vote in the affirmative and answer "present."

The SPEAKER. Call the gentleman's name.

The name of Mr. DAVENPORT was called, and he answered "Present."

The SPEAKER. The Clerk will call my name.

The name of Mr. CLARK of Missouri was called, and he voted "aye," as above recorded. [Applause.]

The result of the vote was announced as above recorded.

On motion of Mr. CLAYTON, a motion to reconsider the vote by which the bill was passed was laid on the table.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. JOHNSON of South Carolina, indefinitely, on account of sickness in family.

To Mr. KITCHIN, for one week, on account of sickness in family.

To Mr. HANNA, for 30 days, on account of important business.

DAM ACROSS SAVANNAH RIVER.

The SPEAKER. The Chair lays before the House the following Senate bill, with House amendment.

The Clerk read as follows:

S. 5930. An act to extend the time for the completion of dams across the Savannah River by authority granted to Twin City Power Co. by an act approved February 29, 1908.

Mr. ADAMSON. Mr. Speaker, I move that the House insist on its amendment and agree to the conference asked.

The SPEAKER. The gentleman from Georgia moves that the House insist on its amendment and agree to the conference asked.

The question was taken, and the motion was agreed to.

The SPEAKER announced the following conferees.

The Clerk read as follows:

Mr. ADAMSON, Mr. RICHARDSON, and Mr. STEVENS of Minnesota.

RETURN OF BILL TO SENATE.

The SPEAKER. The Chair lays before the House the following resolution from the Senate, asking the return of a bill.

The Clerk read as follows:

IN THE SENATE OF THE UNITED STATES,
May 14, 1912.

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (H. R. 20840) to provide for deficiencies in the fund for police and firemen's pensions and relief in the District of Columbia.

Attest:

CHARLES G. BENNETT, *Secretary.*

The question was taken, and the resolution was agreed to.

DAILY HOUR OF MEETING.

Mr. UNDERWOOD. Mr. Speaker, I ask unanimous consent that until further order of the House the daily hour of meeting shall be 11 o'clock instead of 12.

The SPEAKER. The gentleman from Alabama asks unanimous consent that until further order of the House the hour of meeting shall be 11 a. m. instead of 12 o'clock. Is there objection?

Mr. MANN. Reserving the right to object, I take it it is the intention to push forward the appropriation bills; but I think there ought to be one day in the week when the House meets at 12 o'clock so that Members of the House can have opportunity to attend to departmental work, and therefore I suggest to the gentleman whether he would not be willing to except from the provision Wednesday.

Mr. UNDERWOOD. Mr. Speaker, I will state to the gentleman the purpose of making this request is that it is the desire on this side of the House to drive the appropriation bills through practically to the exclusion of everything else until they are passed, and the purpose of asking the House to meet at 11 o'clock was to pass the appropriation bills. If the gentleman desires to do so I will modify my request.

Mr. MANN. I think it would not interfere with the gentleman's purpose.

Mr. UNDERWOOD. And I will ask unanimous consent that on each legislative day in the week, except Wednesday, the House shall meet at 11 o'clock, and on Wednesday it shall meet at 12.

The SPEAKER. The gentleman from Alabama modifies his request, and asks unanimous consent that hereafter, until further ordered by the House, on every day in the week except Wednesday and Sunday the House shall meet at 11 o'clock. On Wednesdays and Sundays the meeting shall be at 12. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

ENROLLED BILL SIGNED.

The SPEAKER announced his signature to enrolled bill of the following title:

S. 2224. An act to amend "An act to regulate the height of buildings in the District of Columbia," approved June 1, 1910.

ADJOURNMENT.

Mr. CLAYTON. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 35 minutes p. m.) the House adjourned to meet to-morrow, Wednesday, May 15, 1912, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1. A letter from the Acting Secretary of the Treasury, transmitting copy of a communication from the Attorney General of the United States submitting estimate of deficiencies in appropriation required by the Department of Justice (H. Doc. No. 752); to the Committee on Appropriations and ordered to be printed.

2. A letter from the Acting Secretary of the Treasury, transmitting copy of a communication from the Secretary of War summitting estimate of appropriation for judgment rendered against Lieut. D. H. Biddle, United States Army, rendered against him for official acts by circut court of Meade County, S. Dak. (H. Doc. No. 754); to the Committee on Appropriations and ordered to be printed.

3. A letter from the Acting Secretary of the Treasury, transmitting copy of a communication from the Secretary of the Navy submitting estimate of appropriation for rebuilding building No. 1, navy yard, Philadelphia, Pa. (H. Doc. No. 753); to the Committee on Naval Affairs and ordered to be printed.

4. A letter from the Acting Secretary of the Treasury, transmitting copy of a communication from the Secretary of War submitting estimate of appropriation required by the War Department to provide medical and hospital supplies, etc., for relief of sufferers from floods in the Mississippi and Ohio Valleys (H. Doc. No. 755); to the Committee on Appropriations and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several calendars therein named, as follows:

Mr. FERRIS, from the Committee on the Public Lands, to which was referred the bill (H. R. 19476) granting certain lands to the State of California to form a part of Redwood Park in said State, reported the same with amendment, accompanied by a report (No. 697), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

He also, from the Committee on Indian Affairs, to which was referred the bill (H. R. 23184) directing the Secretary of the Interior to deliver patents to Seminole allottees, and for other purposes, reported the same without amendment, accompanied by a report (No. 698), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. PEPPER, from the Committee on Military Affairs, to which was referred the bill (H. R. 23934) to authorize the appointment of Harold Hancock Taintor to the grade of second lieutenant in the Army, reported the same without amendment, accompanied by a report (No. 700), which said bill and report were referred to the Private Calendar.

Mr. CARTER, from the Committee on Indian Affairs, to which was referred the bill (H. R. 22083) relating to inherited estates in the Five Civilized Tribes in Oklahoma, reported the same with amendment, accompanied by a report (No. 699), which said bill and report were referred to the House Calendar.

Mr. CONRY, from the Committee on Military Affairs, to which was referred the bill (H. R. 13566) for the relief of soldiers and sailors who enlisted or served under assumed names, while minors or otherwise, in the Army or Navy of the United States during any war with any foreign nation or people, reported the same without amendment, accompanied by a report (No. 701), which said bill and report were referred to the House Calendar.

Mr. HAMLIN, from the Committee on Interstate and Foreign Commerce, to which was referred the bill (H. R. 22999) providing for the construction and maintenance by the city of St. Louis, Mo., of an intake tower in the Mississippi River at St. Louis, Mo., reported the same with amendment, accompanied by a report (No. 702), which said bill and report were referred to the House Calendar.

Mr. STEVENS of Minnesota, from the Committee on Interstate and Foreign Commerce, to which was referred the bill (H. R. 23634) to authorize the village of Oslo, in the county of Marshall, in the State of Minnesota, to construct a bridge across the Red River of the North, reported the same without amendment, accompanied by a report (No. 703), which said bill and report were referred to the House Calendar.

Mr. STEPHENS of Texas, from the Committee on Indian Affairs, to which was referred the bill (H. R. 22647) providing for the sale and entry of certain lands in the State of Oklahoma, and for other purposes, reported the same with an amendment, accompanied by a report (No. 704), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, the Committee on Claims was discharged from the consideration of the bill (H. R. 18745) for the relief of Emma Louise Du Bois, heir of Amos Towle, and the same was referred to the Committee on War Claims.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. WEBB: A bill (H. R. 24525) to preserve and protect human life in ocean travel; to the Committee on the Merchant Marine and Fisheries.

By Mr. SMITH of California: A bill (H. R. 24526) to exempt from cancellation certain desert-land entries in the Chuckawalla Valley, Cal.; to the Committee on the Public Lands.

By Mr. CALDER: A bill (H. R. 24527) to authorize the Secretary of War to make certain disposition of obsolete Springfield rifles, caliber .45, bayonets and bayonet scabbards for same; to the Committee on Military Affairs.

By Mr. MAGUIRE of Nebraska: A bill (H. R. 24558) to establish a fish hatchery and fish-culture station at Lincoln, in the State of Nebraska; to the Committee on the Merchant Marine and Fisheries.

By Mr. JOHNSON of Kentucky: Resolution (H. Res. 536) authorizing the payment of the expenses of the Committee on the District of Columbia in making the investigation authorized by House resolution 154, to an amount not exceeding $10,000 in addition to that heretofore authorized; to the Committee on Accounts.

By Mr. GARRETT: Resolution (H. Res. 537) authorizing the Mississippi River Commission to investigate and report upon the cost of constructing a system of levees or embankments along said river in connection with those already constructed; to the Committee on Rules.

By Mr. BROUSSARD: Resolution (H. Res. 538) authorizing and directing the Mississippi River Commission to investigate and report upon the cost of constructing a system of levees or embankments along the Mississippi River, etc.; to the Committee on Rules.

By Mr. MADDEN: Resolution (H. Res. 539) providing for the consideration of House bill 22593, etc.; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ANTHONY: A bill (H. R. 24528) granting a pension to Mary E. Macklin; to the Committee on Pensions.

Also, a bill (H. R. 24529) granting an increase of pension to William E. M. Oursler; to the Committee on Invalid Pensions.

By Mr. BARTLETT: A bill (H. R. 24530) granting a pension to Eli Thomas; to the Committee on Pensions.

By Mr. BATHRICK: A bill (H. R. 24531) to correct the military record of Benjamin F. Lovett; to the Committee on Military Affairs.

By Mr. BOWMAN: A bill (H. R. 24532) granting an increase of pension to Nathaniel Mead; to the Committee on Invalid Pensions.

By Mr. BROUSSARD: A bill (H. R. 24533) for the relief of heirs of Joseph Melancon; to the Committee on War Claims.

By Mr. BURKE of Wisconsin: A bill (H. R. 24534) granting an increase of pension to Julius Kloehn; to the Committee on Invalid Pensions.

By Mr. BYRNES of South Carolina: A bill (H. R. 24535) for the relief of the heirs of Dr. John W. Kirk, deceased; to the Committee on War Claims.

By Mr. CALDER: A bill (H. R. 24536) granting an increase of pension to Dominick Dacy, alias Michael Conners; to the Committee on Invalid Pensions.

Also, a bill (H. R. 24537) for the relief of Charles Wouters; to the Committee on Naval Affairs.

By Mr. CARLIN: A bill (H. R. 24538) for the relief of James S. Garrison; to the Committee on War Claims.

Also, a bill (H. R. 24539) for the relief of the estate of William Knight, deceased; to the Committee on War Claims.

By Mr. CULLOP: A bill (H. R. 24540) granting an increase of pension to John T. Morgan; to the Committee on Invalid Pensions.

By Mr. CURRY: A bill (H. R. 24541) granting a pension to James W. Banks; to the Committee on Invalid Pensions.

By Mr. DICKSON of Mississippi: A bill (H. R. 24542) granting pensions to the minor children of Capt. Devreaux Shields; to the Committee on Pensions.

By Mr. DYER: A bill (H. R. 24543) for the relief of John A. Wanless; to the Committee on Military Affairs.

By Mr. FIELDS: A bill (H. R. 24544) granting a pension to Mary Bradley; to the Committee on Invalid Pensions.

Also, a bill (H. R. 24545) granting an increase of pension to Andrew Gallagher; to the Committee on Invalid Pensions.

Also, a bill (H. R. 24546) granting an increase of pension to William L. Duncan; to the Committee on Invalid Pensions.

Also, a bill (H. R. 24547) granting an increase of pension to Benjamin Puckett; to the Committee on Invalid Pensions.

Also, a bill (H. R. 24548) granting an increase of pension to William N. Perry; to the Committee on Invalid Pensions.

By Mr. HAMLIN: A bill (H. R. 24549) granting a pension to Martha E. A. Ackerman; to the Committee on Pensions.

By Mr. HOBSON: A bill (H. R. 24550) granting an increase of pension to Neil Hughes; to the Committee on Pensions.

By Mr. LAFEAN: A bill (H. R. 24551) granting a pension to George Rodney Burt; to the Committee on Pensions.

By Mr. LANGLEY: A bill (H. R. 24552) granting an increase of pension to John Breeding; to the Committee on Invalid Pensions.

By Mr. PALMER: A bill (H. R. 24553) granting an increase of pension to Margaret Bunnell; to the Committee on Invalid Pensions.

By Mr. PEPPER: A bill (H. R. 24554) granting a pension to Amanda Fisher; to the Committee on Invalid Pensions.

By Mr. SULLOWAY: A bill (H. R. 24555) granting an increase of pension to Edward W. Clough; to the Committee on Invalid Pensions.

By Mr. TALBOTT of Maryland: A bill (H. R. 24556) granting an increase of pension to William H. Chenoweth; to the Committee on Invalid Pensions.

By Mr. TUTTLE: A bill (H. R. 24557) for the relief of Paymaster Frederick G. Pyne, United States Navy; to the Committee on Claims.

By Mr. AIKEN of South Carolina: A bill (H. R. 24559) granting a pension to James T. Cape; to the Committee on Invalid Pensions.

By Mr. CARY: A bill (H. R. 24560) for the relief of the Milwaukee Structural Steel Co.; to the Committee on Claims.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER (by request): Petition of representatives of every Jewish society of Wilmington, Del., against passage of the Dillingham bill and all other bills containing educational test for immigrants; to the Committee on Immigration and Naturalization.

Also (by request), resolutions of the mayor and the City Council of Los Angeles, Cal., relative to regulations of ocean steamers as to lifeboats and deck crews, etc.; to the Committee on the Merchant Marine and Fisheries.

By Mr. ALLEN: Petitions of U. S. Grant and other Sons of Veterans' camps and general memorial committee of Cincinnati, Ohio, relating to erection of monument to the late Gen. William Henry Harrison, President of the United States; to the Committee on the Library.

Also, petition of Independent Order B'rith Abraham and B'rith Sholom, of Cincinnati, Ohio, protesting against bills requiring literacy test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. AINEY: Resolutions of the Patriotic Order Sons of America, favoring passage of the Dillingham and other bills restricting undesirable immigration; to the Committee on Immigration and Naturalization.

By Mr. BARNHART: Petition of citizens of Warsaw, Kosciusko County, Ind., favoring passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. BARTLETT: Resolutions of Independent Order of B'nai B'rith, of Macon, Ga., against passage of bills containing educational test, etc., for immigrants; to the Committee on Immigration and Naturalization.

By Mr. BROUSSARD: Papers to accompany bill for the relief of estate of Joseph Melancon, of St. Martin Parish, La.; to the Committee on Claims.

By Mr. BYRNES of South Carolina: Petitions of citizens of Fairfax, Barnwell, Allendale, Bamberg, Beaufort, and Denmark, all in the State of South Carolina, favoring legislation to give the Interstate Commerce Commission further power toward the regulation of express rates and express classifications; to the Committee on Interstate and Foreign Commerce.

Also, petitions of citizens of Barnwell, Allendale, Fairfax, Bamberg, Beaufort, and Denmark, all in the State of South Carolina, protesting against any parcel-post system; to the Committee on the Post Office and Post Roads.

By Mr. CALDER: Resolution of the Patriotic Order Sons of America and Daughters of Liberty, of Brooklyn, N. Y., favoring passage of the Dillingham bill and other bills containing educational test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. CANDLER: Petition of citizens of Mississippi favoring passage of bill providing old-age pensions for deserving men and women over 65 years of age; to the Committee on Pensions.

By Mr. CARY: Petition of Charles R. Van Hise, president of the University of Wisconsin, favoring the Rockefeller foundation; to the Committee on the Judiciary.

By Mr. DANIEL A. DRISCOLL: Petition of the New York State Legislative Board, Brotherhood of Locomotive Engineers, Electric City Division, No. 382, favoring passage of the workmen's compensation bill; to the Committee on the Judiciary.

Also, petitions of Polish National Alliance No. 265, Polish Mechanics No. 100, Azytelnis Pokka and St. Cassmiers Paigst, of Buffalo, N. Y., against passage of the Dillingham bill and other bills containing educational test, etc., for immigrants; to the Committee on Immigration and Naturalization.

By Mr. FITZGERALD: Petition of the Chamber of Commerce of the State of New York, relating to the promotion of efficiency in the administration of the Federal Government; to the Committee on Appropriations.

Also, petitions of the Civic Club of Carlisle, Pa., and the Woman's Home Missionary Society of the Presbytery of Philadelphia, Pa., urging an appropriation of $105,000 for a pier at the Philadelphia immigrant station, Gloucester, N. J.; to the Committee on Appropriations.

Also, petition of the Rochester Chamber of Commerce, favoring passage of the 1-cent letter postage rate; to the Committee on the Post Office and Post Roads.

Also, petitions of the Allied Committees Political Refugees Defense League of America, New York; the United Hebrew Trades, New York; the Socialist Party, Branch No. 3, New York; citizens of Philadelphia, Pa.; and the United Polish Societies, Brooklyn, N. Y., protesting against the passage of the Dillingham bill (S. 3175) containing the literacy test; to the Committee on Immigration and Naturalization.

Also, petition of the Sons of the Revolution in the State of New York, favoring passage of Senate bill 271, for publishing all archives relating to the War of the Revolution; to the Committee on Military Affairs.

Also, petition of the National Civic Federation of Washington, D. C., favoring passage of the workmen's compensation bill; to the Committee on the Judiciary.

By Mr. FOSS: Petition of the First Russian Branch of the Socialist Party, of the city of Chicago, protesting against passage of the Root amendment to the immigration bill—any alien who conspires with others to overthrow a foreign government is liable to deportation; to the Committee on Immigration and Naturalization.

By Mr. FOCHT: Petition of citizens of Middleburg, Pa., favoring passage of the Kenyon-Sheppard liquor bill; to the Committee on the Judiciary.

By Mr. FORNES: Petition of the Order of Railway Conductors and Brotherhood of Railroad Trainmen, of Philadelphia, Pa., favoring passage of workmen's compensation bill; to the Committee on the Judiciary.

Also, petition of a citizen of New York City, N. Y., against passage of the Oldfield bill, to amend the patent laws; to the Committee on Patents.

By Mr. FULLER: Petition of Isaac E. Lippincott, of Camden, N. J., favoring passage of House bill 1339, to grant increase of pensions to certain soldiers who lost an arm or a leg in the Civil War; to the Committee on Invalid Pensions.

Also, petition of the Illinois Manufacturers' Association, against legislation to amend patent laws; to the Committee on Patents.

By Mr. GOLDFOGLE: Resolutions of Ostrolenka Lodge, No. 206, Order B'rith Abraham; United Borisower Lodge, No. 598, Independent Order B'rith Abraham; Fortschutt Lodge, No. 207, Order B'rith Abraham, of New York City, N. Y.; German-American Alliance of Philadelphia, Pa.; Allied Committee of the Political Refugee Defense League of America, of New York; Bernhard Baer Lodge, No. 27, Independent Order Ahawas Israel, of New York City; Repiner Lodge, No. 23, Order B'rith Abraham; Ahawas Sholem Anskey Pinsk; H. B. Lodge, No. 65, Independent Order Ahawas Israel; Juda Halewz Lodge, No. 204, Independent Order B'rith Abraham; Jessie Seligman Lodge, No. 103, Independent Order B'rith Abraham; Aaron Weiss Lodge, No. 244, Order B'rith Abraham; Orler Brotherhood Lodge, No. 291, Independent Order B'rith Abraham; Independent Minsker Lodge, No. 601, Independent Order B'rith Abraham; Jehuda Mezobish Lodge, No. 393, Order B'rith Abraham; Sons of Judah Lodge, No. 438, Independent Order B'rith Abraham; Joseph Held Lodge, No. 527, Independent Order B'rith Abraham; Kerdaner Association and American Progressive Lodge, No. 524, Independent Order B'rith Abraham; and Rozesishower Lodge, No. 521, of New York City, N. Y., against passage of Dillingham bill and amendments, restricting immigration; to the Committee on Immigration and Naturalization.

By Mr. GRIEST: Petition of the adjustment committee and Philadelphia (Pa.) Lodge, No. 511, Railroad Trainmen, urging passage of the so-called workmen's compensation bill; to the Committee on the Judiciary.

Also, petition of citizens of Lancaster County, Pa., favoring passage of the Kenyon-Sheppard bill; to the Committee on the Judiciary.

By Mr. HENRY of Connecticut: Resolutions of the Commission Merchants' Association of New Haven, Conn., against passage of certain parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. HUGHES of New Jersey: Resolutions of the Patriotic Order Sons of America, favoring passage of the Dillingham and

other bills restricting immigration; to the Committee on Immigration and Naturalization.

By Mr. KAHN: Petition of Frederick Baruch, of San Francisco, Cal., against passage of anti-injunction bill which will legalize boycott; to the Committee on the Judiciary.

Also, petition of California Civic League, of San Francisco, Cal., favoring legislation to prevent such disasters as that of the *Titanic;* to the Committee on the Merchant Marine and Fisheries.

Also, petition of F. C. Drew, of San Francisco, Cal., favoring House bill 22589, to provide for purchase of a building for American embassy in the City of Mexico; to the Committee on Foreign Affairs.

Also, petition of the California Canneries Co., of San Francisco, Cal., favoring legislation to protect Mississippi Valley from floods; to the Committee on Rivers and Harbors.

Also, petitions of the Labor Council of San Francisco, Cal., against employment of nonunion men by W. B. Moses & Sons Co.; to the Committee on Labor.

By Mr. KORBLY: Petition of Benjamin Harrison Lodge, No. 587, Independent Order B'rith Abraham, Indianapolis, Ind., protesting against passage of the Dillingham bill (S. 3175) containing the literacy test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. LAFFERTY: Petition of John H. White and other citizens of Portland and The Dalles, Oreg., favoring the passage of the anti-Taylor system bills; to the Committee on the Judiciary.

By Mr. LAFEAN: Papers to accompany House bill 19165, granting increase of pension to Samuel M. Pitzer, of Bendersville, Adams County, Pa.; to the Committee on Invalid Pensions.

By Mr. LINDSAY: Resolutions of the Twenty-first Assembly District Socialist Party, of Brooklyn, N. Y., against passage of Root amendment to immigration bill relative to deportation of aliens, etc., and of the Patriotic Order Sons of America, favoring passage of Dillingham bill for restricting undesirable immigration; to the Committee on Immigration and Naturalization.

By Mr. MANN: Petition of the United Lithuanian Societies and Russian Branch of the Socialist Party, of Chicago, Ill., against passage of Root amendment to immigration bill for deportation of aliens, etc.; to the Committee on Immigration and Naturalization.

Also, petition of Square Deal Lodge, No. 752, Brotherhood of Railroad Trainmen, against passage of the employers' liability and workmen's compensation act; to the Committee on the Judiciary.

By Mr. McCOY: Resolutions of the Independent Order of King Solomon and Independent Order B'rith Abraham, Admiral Sampson Lodge, No. 192, and Independent Order of King Solomon, Jemelers Lodge, and citizens of Newark, N. J., against passage of Dillingham and other bills containing educational test, etc., for immigrants; to the Committee on Immigration and Naturalization.

By Mr. MOORE of Pennsylvania: Petition of the Philadelphia Stationers' Association, of Philadelphia, Pa., protesting against any change in the present patent laws; to the Committee on Patents.

Also, petitions of Morris Haber Lodge, No. 7; Hyman Lodge, No. 75; Marcus Jastrow Lodge, No. 152; Liberty Lodge, No. 12; Columbia Lodge, No. 19; United Minsker Lodge, No. 163; and Boruch Spinoza Lodge, No. 185, Independent Order B'rith Sholom, Philadelphia, Pa.; of Rabbi Saehs Lodge, No. 46, Independent Order, Ahawas Israel, Philadelphia, Pa.; of Samuel J. Randall Lodge, No. 8, Independent Order B'rith Sholom, Philadelphia, Pa., protesting against passage of the Dillingham bill (S. 3175) containing literacy test for immigrants; to the Committee on Immigration and Naturalization.

Also, petition of the Patriotic Order Sons of America, favoring passage of the Dillingham bill (S. 3175), containing literacy test for immigrants; to the Committee on Immigration and Naturalization.

Also, petitions of Baron De Hirsh Lodge, No. 535, Independent Order B'rith Abraham; of Wachuowker Lodge, No. 85; First Berschader Lodge, No. 79; Washington Lodge, No. 48; Has Acarmel Lodge, No. 60; Dr. A. R. Bickstein Lodge, No. 29; Harry Sacks Lodge, No. 57, and First Chotoneer Lodge, No. 80, Independent Order B'rith Sholom, all of Philadelphia, Pa., protesting against passage of the Dillingham bill (S. 3175), containing the literacy test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. POST: Petition of the Patriotic Order Sons of America, National Camp, favoring passage of the Dillingham bill (S. 3175), containing literacy test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. REILLY: Petition of the Connecticut Merchants' Association, favoring passage of bill for 1-cent letter postage; to the Committee on the Post Office and Post Roads.

Also, petition of Independent Minsker Association, at New Haven, Conn., against passage of the Dillingham bill and other bills containing educational test, etc., for immigrants; to the Committee on Immigration and Naturalization.

By Mr. SULZER: Petition of the Brotherhood of Railroad Trainmen, favoring passage of the workmen's compensation bill; to the Committee on the Judiciary.

Also, petition of America's Organization of Automobilists, New York, favoring improvement of the highways; to the Committee on Agriculture.

Also, petition of the Committee of Wholesale Grocers, New York, favoring reduction of duties on raw and refined sugars; to the Committee on Ways and Means.

Also, petition of the Northwestern University School of Commerce, Chicago, Ill., favoring passage of bill providing an international commission to look into the high cost of living; to the Committee on Foreign Affairs.

Also, petition of E. A. M. Sweeney, of New York, protesting against passage of the Oldfield bill relative to abolishing restricted prices on goods; to the Committee on Patents.

Also, petition of the Allied Printing Trades Council of New York, favoring passage of the 1-cent postage rate; to the Committee on the Post Office and Post Roads.

Also, petition of Wm. H. Enhaug & Son, New York, protesting against passage of the Oldfield bill for preventing fixed prices on patent goods; to the Committee on Patents.

Also, petition of American Progressive Lodge, No. 521, Independent Order B'rith Abraham; Baranower Lodge, No. 243, Independent Order B'rith Sholom; Roeder Lodge, No. 24, Independent Order B'rith Abraham; Isidore D. Doctorow; and Hyman Sherman, all of New York, protesting against passage of the Dillingham bill (S. 3175) containing the literacy test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. THAYER: Petition of Lithuanian residents of Worcester, Mass., protesting against passage of Dillingham bill (S. 3175) containing literacy test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. TILSON: Petition of the Knights of Israel and the Independent Minsker Association, of New Haven, Conn., protesting against passage of the Dillingham bill (S. 3175) containing the literacy test for immigrants; to the Committee on Immigration and Naturalization.

Also, petition of the Central Labor Union of Meriden, Conn., favoring passage of the humanitarian bill (H. R. 16844); to the Committee on Interstate and Foreign Commerce.

By Mr. TOWNSEND: Petitions of Oldmoral Sampson Lodge, No. 192, Independent Order B'rith Abraham; of Grand Lodge, Independent Order of King Solomon; of Arnold Weiss Lodge, No. 8; King Solomon Lodge, No. 1; Jewelers' Lodge, No. 12; Brisk Dilita Lodge, No. 11; Baruch Abi Klausub Lodge, No. 2; and Iron Bound Lodge, No. 15, Independent Order of King Solomon; and of Baron Rothschild Lodge, No. 105, Independent Order B'rith Abraham, all of Newark, N. J., protesting against passage of the Dillingham bill (S. 3175) containing the literacy test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. TUTTLE: Petitions of Morristown Lodge, No. 375, Independent Order B'rith Abraham, of Morristown, N. J.; of the Grand Lodge, Independent Order of King Solomon, of Newark, N. J.; of the Allied Committees Political Defense League of America, New York; of the United Hebrew Trades, New York; and of the United Hebrew Organization of New Jersey, protesting against passage of the Dillingham bill (S. 3175), containing literacy test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. UNDERHILL: Petition of citizens of thirty-seventh congressional district of the State of New York, praying for legislation that will give the Interstate Commerce Commission power to regulate express rates; to the Committee on Interstate and Foreign Commerce.

Also, petition of United States Grand Lodge, Order B'rith Abraham, of Elmira, N. Y., against passage of the Dillingham and other bills containing educational test for immigrants; to the Committee on Immigration and Naturalization.

Also, petition of citizens of the thirty-seventh congressional district of the State of New York, opposing parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. UTTER: Petition of United States Grand Lodge, Order B'rith Abraham, and Providence City Lodge, No. 143, Providence, R. I., against passage of the Dillingham and other bills containing educational test, etc., for immigrants; to the Committee on Immigration and Naturalization.

By Mr. VARE: Petitions of Liberty Lodge, No. 12; First Bershader Lodge, No. 79; Washington Lodge, No. 48; Dr. A. R. Bickstein Lodge, No. 28; Columbia Lodge, No. 19; Har Acarmel Lodge, No. 60; Star Beneficial Lodge, No. 112; Harry Sacks Lodge, No. 57; First Chatiner Lodge, No. 80; Sol Wederitz Lodge, No. 96; Louis Singer Lodge, No. 18; Ind. Preiaslower Lodge, No. 245; King Solomon Lodge, No. 101; Barneh Spinoza Lodge, No. 143; Wachnewker Lodge, No. 85; Benjamin Franklin Lodge, No. 38; Kanever Lodge; Benjamin Franklin Lodge, No. 327; and Royal Lodge, No. 440, Independent Order B'rith Abraham, of Philadelphia, Pa., against passage of the Dillingham and other bills containing educational test for immigrants; to the Committee on Immigration and Naturalization.

Also, petition of citizens of the State of Pennsylvania, favoring passage of House bill 22339 and Senate bill 6172, against workmen being timed with a stop watch while at work; to the Committee on the Judiciary.

By Mr. WILLIS: Petition of the Patriotic Sons of America, favoring passage of the Dillingham bill (S. 3175), containing the literacy test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. WILSON of New York: Resolution of Patriotic Order Sons of America, favoring passage of the Dillingham bill and other bills restricting immigration; to the Committee on Immigration and Naturalization.

SENATE.

WEDNESDAY, *May 15, 1912.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

FINDINGS OF THE COURT OF CLAIMS.

The VICE PRESIDENT laid before the Senate the following communications from the assistant clerk of the Court of Claims, transmitting certified copies of the findings of fact and conclusions of law filed by the court in the following causes:

John W. Alves *v.* United States (S. Doc. No. 670);

Virginia Lape, administratrix of the estate of Wentz Curtis Miller, *v.* United States (S. Doc. No. 669);

Alexander Mackenzie *v.* United States (S. Doc. No. 668); and

Henry L. Abbot *v.* United States (S. Doc. No. 667).

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed a bill (H. R. 23635) to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, in which it requested the concurrence of the Senate.

The message also announced that the House insists upon its amendment to the bill (S. 5930) to extend the time for the completion of dams across the Savannah River by authority granted to Twin City Power Co. by an act approved February 29, 1908; agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon; and had appointed Mr. ADAMSON, Mr. RICHARDSON, and Mr. STEVENS of Minnesota managers at the conference on the part of the House.

The message further returned to the Senate, in compliance with its request, the bill (H. R. 20840) to provide for deficiencies in the fund for police and firemen's pensions and relief in the District of Columbia.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 19238) to amend section 90 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary" approved March 3, 1911, and for other purposes.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bill and joint resolution, and they were thereupon signed by the Vice President:

S. 2224. An act to amend "An act to regulate the height of buildings in the District of Columbia," approved June 1, 1910; and

H. J. Res. 39. Joint resolution proposing an amendment to the Constitution, providing that Senators shall be elected by the people of the several States.

PETITIONS AND MEMORIALS.

The VICE PRESIDENT presented a telegram, in the nature of a petition, from the State Association of Postmasters of Colorado, praying for the enactment of legislation providing that free city delivery be extended to all second and third class post offices, which was referred to the Committee on Post Offices and Post Roads.

He also presented a memorial of Ladies' Waist and Dressmakers' Local Union No. 25, International Ladies' Garment Workers' Union, of New York, remonstrating against the adoption of the so-called illiteracy-test amendment to the immigration law, which was ordered to lie on the table.

He also presented a resolution adopted by the Chamber of Commerce of Philadelphia, Pa., favoring the enactment of legislation providing for the protection of passengers on ocean-going vessels, which was referred to the Committee on Commerce.

He also presented a resolution adopted by the General Conference of the Methodist Episcopal Church of Minnesota, favoring the adoption of an amendment to the Constitution to prohibit the manufacture, sale, and importation of intoxicating liquors, which was referred to the Committee on the Judiciary.

Mr. ASHURST. I present a telegram in the nature of a petition in reference to Senate bill No. 1. I ask that the telegram lie on the table and be printed in the RECORD.

There being no objection, the telegram was ordered to lie on the table and to be printed in the RECORD, as follows:

PHOENIX, ARIZ., *May 10, 1912.*

Hon. HENRY F. ASHURST,
Washington, D. C.:

Arizona Medical Association, at Bisbee, May 8, passed resolutions earnestly requesting you to lend every aid to the passage of Owen Senate bill No. 1 without malicious amendments, which will defeat its purpose. This association is composed of allopaths, homeopaths, and eclectics. Are unanimous in this respect.

W. WARNER WATKINS, *Secretary.*

Mr. SUTHERLAND presented a petition of Salt Lake Lodge, No. 106, International Association of Machinists, of Salt Lake City, Utah, praying for the enactment of legislation to regulate the method of directing the work of Government employees, which was referred to the Committee on Education and Labor.

Mr. GALLINGER presented a petition of the Woman's Auxiliary of St. Thomas's Church, of Hanover, N. H., praying for the enactment of legislation to provide medical and sanitary relief for the natives of Alaska, which was referred to the Committee on Territories.

He also presented the memorial of Alfred L. Gilbert, of Berlin, N. H., remonstrating against the establishment of a department of public health, which was ordered to lie on the table.

He also presented petitions of sundry citizens of the District of Columbia, praying for the enactment of legislation to maintain the present water rates in the District, which were referred to the Committee on the District of Columbia.

He also presented resolutions adopted by the Georgetown Citizens' Association, of the District of Columbia, favoring the enactment of legislation providing for the acquisition of certain land along the course of Rock Creek, which were ordered to lie on the table.

Mr. CATRON presented a memorial of the New Mexico Retailers' Association, remonstrating against the establishment of a parcel-post system, which was referred to the Committee on Post Offices and Post Roads.

Mr. SMITH of South Carolina presented memorials of sundry citizens of Florence, Darlington, and Hartsville, all in the State of South Carolina, remonstrating against the establishment of a parcel-post system, which were referred to the Committee on Post Offices and Post Roads.

Mr. NELSON presented a petition of members of the Southwestern Minnesota Medical Society, praying for the establishment of a department of public health, which was ordered to lie on the table.

Mr. TOWNSEND presented a petition of Sanford Hunt Camp, No. 19, Department of Michigan, United Spanish War Veterans, of Jackson, Mich., praying for the enactment of legislation to pension widow and minor children of any officer or enlisted man who served in the War with Spain or the Philippine insurrection, which was referred to the Committee on Pensions.

Mr. SHIVELY presented a petition of the Trades and Labor Assembly of Logansport, Ind., praying for the enactment of legislation prohibiting fraud upon the public by requiring manufacturers to place their own names upon manufactured articles, which was referred to the Committee on Manufactures.

Mr. O'GORMAN presented a petition of the United Trades and Labor Council of Buffalo, N. Y., praying for the enactment of legislation providing for the protection of passengers on ocean-going vessels, which was referred to the Committee on Commerce.

He also presented a petition of Major General George F. Elliott Camp, No. 84, Department of New York, United Spanish War